

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-1079

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

No. 76-1079

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

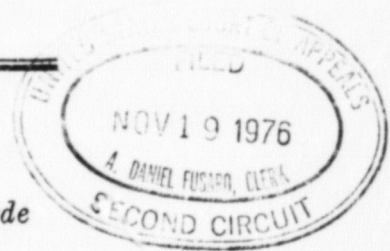
JOSEPH F. VALVERDE III,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX
Volume II—Pages 303a-End

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while agents are going through drawers looking for
narcotics paraphernalia that may be seized as evidence.

That is the Government's position --

(continued on next page.)

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THE COURT: Really, the problem we have got is, if I understand Mr. McCarthy correctly, there is a renewal of his entire motion to suppress all items picked up in the bedroom on the ground that this 3509 material indicates the possibility that there was a search made prior to the issuance of the warrant.

He says, "The fact that pastic bags were on the floor near luggage or that Piper told Guiliani that they were on floor near luggage, and that they looked like they had been turned inside out, indicates that there was a broader search than the agents testified."

MR. ENGEL: Your Honor, if I may respond --

THE COURT: And I guess you would like an opportunity to confront Piper with that statement or confront the other agents with that statement, so we start all over again, right?

MR. MC CARTHY: That's correct, your Honor.

MR. ENGEL: Your Honor, may I make a comment just about that issue, the plastic bags?

Mr. Piper, as the Government's position, will testify that the plastic bags were found outside the bathroom near the luggage before the agents ever got into that apartment and that the reason they were there was that the clients of Mr. Rothblatt and Mr. McCarthy, had emptied

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2 contents thereof, that is, cocaine or some other illicit
3 substance --

4 THE COURT: Who testified this?

5 MR. ENGEL: That's what Piper will testify to.

6 THE COURT: Did he testify to that on the
7 suppression hearing?

8 MR. ENGEL: No, he didn't your Honor.

9 Mr. McCarthy's motion, on Mr. Guiliani's notes,
10 is susceptible of a quiet intense interpretation as well as
11 the interpretation which Mr. McCarthy seeks to give it.

12 So I think that Mr. McCarthy may explore that,
13 but it doesn't create the obvious contradiction which he
14 states, and, therefore, I think that with respect to the
15 plastic bags your Honor's ruling may stand.

16 But, in any event, you, as the tryer of fact,
17 may decide on the basis of the trial testimony of Piper
18 whether or not it makes any sense to re-open the suppression
19 issue even though the jury is impaneled at the close of
20 business to decide whether or not his trial testimony gives
21 you reason to believe you might change your mind as to the
22 Fourth Amendment issue.

23 THE COURT: Look, let me just make absolutely
24 clear:

25 What is it you want to do in a re-opened sup-

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2 pression hearing?

3 MR. MC CARTHY: I would like to call Mr. Piper
4 to the stand and confront him with, as your Honor mentioned,
5 with these statements; and also I would ask that Agent
6 Magnuson and Pavichevich be called, because certainly,
7 your Honor, Piper's statement to Guiliani, whether it is
8 true or false, contradicts Agent Gray's testimony.

9 MR. ENGEL: It doesn't.

10 MR. MC CARTHY: Agent Gray's testimony, and I
11 can give you the page in a second, I have it outside --

12 THE COURT: Have you got the whole minutes?

13 MR. MC CARTHY: Yes.

14 THE COURT: Why don't you bring them in.

15 MR. ENGEL: Agent Gray's testimony was that the
16 bags were found inside the litigation bag, that is, the
17 plastic bags were found inside the litigation bags.

18 MR. ENGEL: Your Honor --

19 THE COURT: Let's wait until he comes back.

20 (Pause.)

21 THE COURT: What is it you are referring to,
22 Mr. McCarthy?

23 MR. MC CARTHY: Agent Gray's testimony, page 363.
24 That would be on the second volume, your Honor.

25 THE COURT: Page 362.

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2 MR. MC CARTHY: That's Hall, your Honor.

3 THE COURT: Just a moment.

4 Page 362, Agent Hall direct testimony:

5 "Q Did there come a time when Mr. Fortuin called
6 to your attention two empty plastic cases, as they were
7 described, litigation cases?

8 "A Did you say 'two empty cases'?

9 "Q Two empty cases, yes.

10 "A I don't recall that any of the cases were empty.

11 "Q Do you recall what was in each case of the cases
12 that you searched?

13 "A I believe there were three black suitcases that
14 were identical. And in one suitcase there was the guns and
15 some documents.

16 " In one suitcase there were plastic bags which
17 had liquid, drops of liquid, on the insides of the bags and
18 on the third -- in the third suitcase, my recollection is
19 that there were documents, papers."

20 MR. MC CARTHY: Your Honor, and that is also the
21 testimony of Agent Gray. I'm sorry I said Agent Gray before.

22 That was Agent Hall. Agent Gray's testimony at
23 page 305.

24 THE COURT: Wait a minute.

25 I don't see anything about the bags in page 305.

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2 I don't see anything about your second reference.
3 I don't see that it is responsive to what you said.

4 Page 305 says that the guns were in the bags.
5 I guess that's the inference, but we have never really
6 doubted that. What else?

7 MR. MC CARTHY: I have another reference, your
8 Honor, if I might just check that.

9 I believe it is page 224. Yes, your Honor,
10 page 224 at the bottom of the page, it makes reference to
11 "But we found some bags and they fold over, black leather
12 suitcase that had the smell."

13 THE COURT: Just a minute.

14 Agent Gray, page 224,

15 "Q Can you tell us what, if anything, you recall
16 about the search?

17 "A A peculiar smell, sir, that was coming from the
18 area of the two suitcases located in the closet area of the
19 master bedroom. We looked inside those briefcases and saw
20 just papers, appeared to be business-type papers, and found--
21 never found what was making the smell in that particular area,
22 but we found some bags in a fold-over black leather suit-
23 case that had the smell."

24 Then on the next page "ten of these bags."

25 Were they marked?

MR. FLANNERY: Yes, they were, your Honor.

MR. MC CARTHY: Yes, that's 5A, I believe.

MR. ENGEL: Judge, may I be heard?

THE COURT: Yes.

MR. ENGEL: This is precisely the sort of mischief which 3500 material can create with respect to a hearing --

THE COURT: Listen, don't give me an oration like that. It would have been less mischief if you would have produced the material at the time of the suppression hearing and then we wouldn't have to have this horsing around of a recanvassing witness.

MR. ENGEL: Judge, Mr. Piper's testimony at the suppression hearing was, I believe, that he didn't go back to the bedroom when he was in the apartment before the agents came in.

Is that correct?

MR. MC CARTHY: Right.

MR. ENGEL: His testimony will be, I believe, at the hearing, at trial, that he indeed did go back to the bedroom and indeed did see the plastic bags between the bathroom and the suitcases on the floor.

The inference from that is that your clients emptied those bags into the toilet rather than that the

agents had conducted a prior search.

So that there is nothing necessarily --

THE COURT: I don't understand you at all.

MR. ENGEL: In other words, Piper's trial testimony will be --

THE COURT: What is his testimony at the suppression hearing?

MR. ENGEL: He didn't go back to the bedroom while he was in the apartment with Glasser and Valverde before the agents came in.

He never went there just before his arrest.

Now, at the trial, I believe his testimony --

THE COURT: He went once, he was there before the arrest, right.

MR. ENGEL: Right.

THE COURT: Did he testify at the suppression hearing he went back to the bedroom once?

MR. ENGEL: He said he didn't go back to the bedroom, is my reading of the minutes.

He will testify at trial, I believe, that he did go back to the bedroom, and that when he went back to the bedroom he saw the plastic bags to which Mr. McCarthy has reference on the floor before the agents came in.

The inference, therefore, is that in 3509 he was

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2 talking to Mr. Guiliani about the time that he went into
3 the bedroom before the agents ever came in and saw plastic
4 bags on the floor.

5 THE COURT: What you would contend is that he
6 saw them on the floor, then at some time before the agents
7 got there the defendant stuffed them back into these bags
8 to hide them?

9 MR. ENGEL: Right.

10 THE COURT: So it is consistent?

11 MR. ENGEL: Exactly.

12 And it is not at all inconsistent with --

13 THE COURT: Let me ask you this:

14 Are you willing to take the risk of this: Let's
15 suppose I go against that contingent, I mean, I've got
16 some issues raised on suppression that I am the finder of
17 fact on, right?

18 MR. ENGEL: Yes, Judge.

19 THE COURT: All right.

20 Now, I think, and maybe I'm wrong, but it is
21 either expressly or implicitly -- it seems to me this is the
22 case -- if the Government refrains from producing at a
23 suppression hearing statements of a witness in the nature of
24 3500 material, it seems to me that the Government runs the
25 risk of a mistrial or a dismissal, you know, in the course

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2 of the trial if that 3500 material revives issues that relate
3 to the suppression.

4 Now, what you are saying to me now is, you are
5 not worried about that risk.

6 You believe that the Government will satisfy
7 me that this 3500 material does defeat the findings I made
8 at the suppression hearing, right?

9 MR. ENGEL: That is with respect to the plastic
10 bags. With respect to the gun, the Government --

11 THE COURT: I'm much more concerned about the
12 plastic bags. The gun we can take care of and we can change
13 that. If there were two guns rather than one gun that should
14 be suppressed, I'm not concerned about any broad effect of
15 that.

16 But what I am concerned about is this: That if
17 the evidence would lead me to believe, upon a reexamination
18 of the matter in the light of this 3500 material, that the
19 Government agents had made in fact a substantial search in-
20 side bags and drawers and books before a warrant, that
21 might in fact lead to a suppression of all the seized
22 evidence.

23 That's what you're arguing for, aren't you,
24 Mr. McCarthy?

25 MR. MC CARTHY: That;s correct, your Honor.

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2 THE COURT: Now, in order to explore that, he
3 would want to confront Piper with this statement, he would
4 want to confront an agent or two with this statement, right?

5 MR. MC CARTHY: Yes, your Honor.

6 THE COURT: And this would, of course, mean we
7 could spend, you know, a little bit of time, to say the
8 least, now getting these people here and so forth.

9 MR. ENGEL: Mr. Gailiani, I assume, would have
10 to testify. He's in Washington.

11 THE COURT: He hasn't asked for that. I don't
12 know why you -- but anyway.

13 Now, I guess in a kind of complicated way, what
14 I'm suggesting is this:

15 If the Government wants to go ahead with the
16 trial and let the facts come out in the trial, that's fine
17 with me, but, of course, the Government is running the risk
18 of two things:

19 A reserve of my ruling on the suppression motion
20 and having a mistrial, because if there is reference to a
21 lot of stuff that is then suppressed, you can't cut that
22 out.

23 MR. ENGEL: I understand.

24 I think the Government's position with respect
25 to that will be that you will have to make a decision as to

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2 whether you want to reopen the suppression hearing rulings
3 on the basis of what you hear at trial.

4 If you find that you do, then we will have to
5 have a mistrial.

6 The Government is prepared to take that risk.

7 I don't believe, however, that your ruling as to
8 the suppression motion can be reversed as long as it is made
9 as to your complete awareness as to the witnesses in this
10 case.

11 You will have to make up your mind as to whether
12 there is sufficient new evidence brought forth.

13 THE COURT: In other words, you are confident
14 enough that whatever revelations are in the 3500 material
15 are the kind that can come out at the trial. You are con-
16 fident that they will not change the basic structure of the
17 suppression ruling?

18 MR. ENGEL: Exactly, Judge.

19 THE COURT: All right.

20 Let's go ahead on that basis. Everybody's aware
21 of the problem. You've made your motion. I will listen to
22 the evidence with your point in mind and if there is any
23 point, any real need under the present circumstances, for
24 calling additional witnesses outside the hearing of the
25 jury, fine. But I think the Government's willing to go before

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2 the jury and take its chances.

3 Now, on the Fifth Amendment problem --

4 MR. ENGEL: I have a case on that, Judge.

5 THE COURT: What's your case.

6 MR. ENGEL: U. S. v. Beattie, 522 F. 2nd 267
7 decided in August, Judge Friendly, and basically what that
8 says, it reaffirms that a taxpayer didn't have any right,
9 for instance, to resist a Government subpoena for his tax
10 returns or documents relating to those, and I think it bears
11 absolutely on this situation, that as long as a witness is
12 not compelled to communicate or be a witness against him-
13 self, that that is what the Fifth Amendment protects, and
14 not anything that was ever in his handwriting.

15 If that were the case, we would have very few
16 trials and criminal cases which related to documents in
17 evidence.

18 THE COURT: Let's just go through this. On that,
19 I think the description that is contained in the list I have
20 is probably pretty revealing.

21 We have got Exhibit 15, Glasser's check to Val-
22 verde. Exhibit 16. What is 16?

23 MR. FLANNERY: It is a discussion of kilo trans-
24 actions.

25 THE COURT: On a memo.

MR. FLANNERY: On the last page of a memorandum.

MR. ENGEL: They're notes.

MR. MC CARTHY: Would your Honor like to see that?

THE COURT: Yes.

17 is Valverde's passport and contents. I don't know what the contents are. But I wouldn't --

MR. ENGEL: Those are stamps.

THE COURT: Right, normal contents of passports, right?

MR. ENGEL: Yes, Judge.

THE COURT: All right.

Then 18 is Valverde's bank records. 19, Valverde's \$3,000 deposit slip.

20, ammunition order form.

21, Valverde's airplane records.

22, Regency Hotel note about kilos, et cetera. I.O.U. for \$5,000.

23, Swiss Bank Account keys.

24, Valverde's airline tickets.

25, Cartridge.

26, Financial statement of Vintage Vendors.

27, Valverde-Glasser sale of aircraft. Certain document about that.

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2 28, Valverde purchase of aircraft. A document
3 about that.

4 29, -- what's 29? It says Valverde accountants.

5 MR. FLANNERY: Those are accountants retained.
6 I believe it is a business expense.

7 THE COURT: That's a statement I guess for ser-
8 vices rendered.

9 Then 31 -- as long as you're here, what is 31,
10 Mr. McCarthy?

11 It's a bill from National Account Systems about
12 Continental Airlines. These are business records of one
13 kind or another.

14 32, two address books and a Chemical Bank book.

15 Now 33, and 34, miscellaneous papers. What
16 are they subsequently?

17 Cash flow statements, bills, insurance premium
18 notices and so forth.

19 35 is a partnership agreement.

20 I think we probably can cover this fairly quickly
21 as long as we have taken an hour or more already.

22 What's the argument for Fifth Amendment, Mr.
23 Rothblatt, Jr.?

24 MR. J. ROTHBLATT: The argument simply is that
25 those statements, statements of Valverde, assuming they're

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2 statements of either defendant, that they have written down,
3 they cannot be compelled to produce them and that if they
4 were seized either through a subpoena or through a search,
5 that it is compulsion, it is not voluntary, therefore, it
6 violates the Fifth Amendment.

7 It is that simple.

8 THE COURT: I will deny that motion for a sup-
9 pression on Fifth Amendment grounds.

10 This leaves us remaining Fourth Amendment
11 problems about the gun, the second gun, the bags themselves
12 and the over-all import of any argument about the change
13 in the factual posture.

14 MR. MC CARTHY: That he can.

15 MR. J. ROTHBLATT: Your Honor, our strongest
16 point is that all these personal diaries and papers were
17 outside the scope of the warrant.

18 We haven't discussed that point at all. That is
19 the initial point which I wanted to bring up.

20 MR. MC CARTHY: Judge, just for the record, I
21 wanted to note that we, although we had mentioned this
22 before, that we were joining in the suppression with respect
23 to the Fifth Amendment point.

24 THE COURT: Sure. You've got that.

25 MR. ROTHBLATT: We join into each other's motions.

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2 THE COURT: You're both taking common positions.

3 MR. H. ROTHBLATT: Correct.

4 MR. MC CARTHY: Thank you.

5 THE COURT: These came out of which, the liti-
6 gation bags?

7 MR. FLANNERY: That's correct, your Honor.

8 For example, the formula for refining cocaine
9 and the invoices from Biscayne Chemical came out of an
10 allegator attache case.

11 THE COURT: No, no, wait a minute.

12 Is that part of 15 through 35?

13 MR. J. ROTHBLATT: No, it is not, your Honor.

14 MR. FLANNERY: I'm sorry, your Honor, I have
15 to refer to the list again. Each of the items from 15
16 through 35, your Honor, came from either the allegator
17 attache case or one or the other of the litigation bags.

18 THE COURT: How many litigation bags were there,
19 two?

20 MR. FLANNERY: There were three Willkie, Farr
21 & Gallagher bags and a fourth fold-over suitcase.

22 THE COURT: Was Glasser with Willkie, Farr?

23 MR. FLANNERY: He was a former associate of
24 Willkie, Farr & Gallagher.

25 THE COURT: Refresh my memory. What was the

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2 occasion for looking -- in other words, I don't frankly
3 understand why I reserved the point.

4 I guess I was being --

5 MR. FLANNERY: At the time the trust of the
6 search was for the money that had been serialized and used
7 in purchase of cocaine.

8 The smell of ether detected by Tom Fortuin,
9 Assistant United States Attorney, and formerly a medical
10 student, led them to discover those bags which had the
11 residue, later determined to be cocaine.

12 THE COURT: Wait a minute.

13 They did what?

14 MR. FLANNERY: They were seeking the \$10,000,
15 the "buy money." In the course of the search they dis-
16 covered these bags with the cocaine residue.

17 THE COURT: That was not in the litigation bags
18 or the allegator case, was it?

19 MR. FLANNERY: It was in that fourth bag I
20 described, the fold-over suitcase which was located near the
21 baggage room.

22 THE COURT: Right.

23 Let me just read what I said about the plain
24 view.

25 "Another contention is that the search went

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2 beyond the scope of the warrant which specifically authorizes
3 looking for the proceeds of narcotics transactions and
4 narcotic drug controlled substances.

5 "In connection with this contention, we must keep
6 in mind the fact" -- reading from page 32 of my ruling --
7 "we must keep in mind the fact that under the Supreme
8 Court cases a search may include items which are inadver-
9 tently discovered by the officers in plain view in the
10 course of their specifically authorized search.

11 "The plain view doctrine permits search and
12 seizure of items immediately recognizable as evidence.

13 "At this point I should note that I reject the
14 contention of the defendants that there was some limitation
15 on the search imposed by certain language."

16 Then I will skip that.

17 "Now, it is clear, as I said, that in order to
18 search for these things, it is not only permitted but it is
19 necessary to make as minute a search as the agents could
20 possibly make. This would permit looking into cases, books,
21 drawers and in similar places. This is exactly what the
22 agents and what Fortuin did. And in the course of looking
23 in books and cases, they came across the three staches of
24 money and so forth.

25 "All of these items would be clearly and imme-

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2 recognizable as either proceeds of narcotics transactions or
3 a narcotic drug controlled substance or evidence necessary
4 in a narcotics case. Some of these items would constitute
5 potential instruments in a narcotics transaction. They were
6 in plain view during the search of the case and so forth and
7 were properly seized."

8 Now, what's the issue? I want to know the issue
9 here. I held then, and I would still hold, that it was
10 proper for the agents to look through all of these cases.

11 Now, if given that holding, what's the issue you
12 have raised?

13 MR. J. ROTHBLATT: The point which your Honor
14 indicated at page 33, lines 21 through 24, where you say
15 "All of these items would be clearly and immediately
16 recognizable as either proceeds of narcotics transactions or
17 narcotic controlled substances, et cetera" --

18 THE COURT: Well, the "et cetera" is important.
19 "Or evidence necessary in a narcotics case."

20 MR. J. ROTHBLATT: Fine. Your Honor was refer-
21 ring to items Exhibits 1 through 14.

22 Now, we are referring to diaries, memo books,
23 notebooks. Our point is that those are not immediately
24 recognizable as anything.

25 THE COURT: It seems to me the way to handle

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2 that is, at least I have the issue in mind, and on those
3 items when and if the Government seeks to offer, I will
4 look at it and make a ruling at that time.

5 I think it would be easier to do than sitting
6 here and doing it in a kind of bulk fashion.

7 Okay.

8 So that decision at least on that point is
9 reserved and I will decide as the items come in.

10 Okay. Thanks a lot.

11 MR. MC CARTHY: Judge, Just one point, that it is
12 not related to what we have discussed before, and that is
13 this morning we received transcripts of conversations,
14 taped conversations, that are apparently going to be offered
15 today prior to Mr. Piper's testimony.

16 Apparently on the testimony of Mr. Greenstein.
17 Should we go into that now or would your Honor prefer we
18 wait and have a side bar?

19 THE COURT: I think we better get out to the
20 jury.

21 MR. J. ROSENBLATT: Your Honor, one further
22 point as to these papers.

23 It would also be our contention that some of
24 these papers were not in fact examined at all in the apart-
25 ment, they were just seized in those litigation bags. If

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2 they were seized without being examined, without any deter-
3 mination being made as to what they were, that would clearly
4 also be unlawful.

5 THE COURT: Well, there was so much of clear
6 relevance here that I think you've got to apply a rule of
7 reason. I wouldn't expect an analysis to be made on the
8 spot of each and every -- there was quite a volume of
9 papers.

10 MR. J. ROTHBLATT: Yes, there were.

11 THE COURT: I think there was a reasonable
12 analysis of the nature of these materials and most of them
13 were so clearly relevant to a narcotics transaction that
14 I will reject that argument.

15 But I will go over --

16 MR. J. ROTHBLATT: The point being no detailed
17 inventory was made until many weeks after research.

18 THE COURT: I will reject that argument. Thank
19 you very much.

20 (In open court.)

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2 S T E V E N G R E E N S T E I N, called as a witness
3 by the Government, having been first duly sworn,
4 was examined and testified as follows:

5 MR. ENGEL: May I proceed, your Honor?

6 THE COURT: Yes, certainly.

7 DIRECT EXAMINATION

8 BY MR. ENGEL:

9 Q Mr. Greenstein, may I ask you to remove your
10 glasses at this time?

11 (Witness complies.)

12 Q How old are you, Mr. Greenstein?

13 A Twenty-six.

14 Q Where do you live?

15 A New York City.

16 Q Directing your attention to February 10th of
17 this year, Mr. Greenstein, can you tell us, please, can
18 you best describe what happened on that day?

19 A I went from my apartment to a store on Third
20 Avenue and 86th Street at approximately somewhere around
21 8:00, 8:30, with eight ounces or thereabouts of cocaine,
22 which was to be sold to the people who were waiting at the
23 store for me.

24 Q Who was waiting at the store?

25 A John, Eddie and Danny.

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Q Did you later find out who Danny was?

A Yes.

THE COURT: I didn't get the names.

THE WITNESS: John.

THE COURT: Who?

THE WITNESS: Eddie.

THE COURT: And who else?

THE WITNESS: Danny.

THE COURT: Dan. Go ahead, Mr. Engel.

Q Did you later find out who Danny was or Dan was?

A Yes, sir.

Q Who was Dan?

A An undercover agent.

Q Please speak up, Mr. Greenstein.

A An undercover agent.

Q An undercover agent for whom?

A The DEA.

Q That is the Drug Enforcement Administration?

A Yes, sir.

Q Do you know who John and Eddie were?

A Yes.

Q Who were they?

A Proprietors of the store.

Q Proprietors of the store?

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2 A And friends of mine.

3 Q What were their last names?

4 A I don't know.

5 Q What was the name of the store?

6 A Shoe Boutique or Boutique Shoes, something to
7 that effect.

8 Q Did you also have a business relationship with
9 John and Eddie?

10 A Yes, I did.

11 Q What is your own business, Mr. Greenstein?

12 A I sell shoes.

13 Q Is there any particular kind of shoe you sell?

14 A Ladies' shoes.

15 Q Any particular kind of ladies' shoes?

16 A The name of the company Natural Comfort Shoes.

17 THE COURT: I am sorry?

18 THE WITNESS: Natural Comfort Shoes.

19 Q What was your business relationship with John
20 and Eddie?

21 A I was selling them shoes.

22 Q Over how long a period of time?

23 A About a year.

24 Q What happened on February 10 when you went to
25 the shoe boutique or the boutique shoe store?

1 A I walked in with a bag containing drugs and
2
3 Danny opened up the bag, took out a little bit and told
4 me it wasn't what he expected it to be and then he told
5 me he didn't want it.

6 Q Had you had previous conversations with him?

7 A Yes.

8 Q After he said to you that he didn't want it,
9 what did you do?

10 A Took it back and left the store.

11 Q You took it back, you took the drugs back?

12 A Right.

13 Q What kind of drugs were they, Mr. Greenstein?

14 A Cocaine.

15 Q Did you mention a weight?

16 A Approximately eight ounces.

17 Q How did you know that?

18 A I weighed it.

19 Q Where?

20 A In my apartment.

21 Q You have a scale?

22 A Yes, sir.

23 Q What kind of scale?

24 A A triple beam.

25 Q It is not a spring scale, is it, Mr. Greenstein?

1 A I don't know. I am not sure about whether
2 it is spring or not.

3 Q Did anything occur after you left the store?

4 A I got arrested.

5 Q By whom?

6 A ABout five or six agents.

7 Q Do you remember any of their names?

8 A Jeffrey Hall and a Gray. I think his first
9 name was Scott.

10 Q The first name of Gray you think is Scott?

11 A Yes.

12 Q What happened after you were arrested?

13 A I was put into their car and they began to
14 talk to me. They asked me questions.

15 Q What did they ask you about?

16 MR. ROTHBLATT: Your Honor, I will object
17 to that, what their conversation was, unless it certainly
18 relates to these defendants. I would object to it.

19 THE COURT: I don't know at this point.

20 MR. ENGEL: Those agents will be witnesses.
21 So he can inquire.

22 MR. ROTHBLATT: I don't want any hearsay evi-
23 dence coming out, your Honor. He is talking about a lot
24 of things that are not related.
25

1 THE COURT: Can you come up to the side bar.

2 MR.ENGEL: All right, your Honor, it is prefa-
3 tory, in any event.

4 Q Did you have a conversation with the agents
5 in the back of your car?

6 THE COURT: Without giving the substance. In
7 other words, you had a conversation, right?

8 THE WITNESS: Yes.

9 THE COURT: Okay.

10 Q As the result of that conversation did you
11 and the agents go anywhere?

12 A Yes.

13 Q Where did you go?

14 A My apartment.

15 Q Where do you live?

16 A At that time 314 East 83rd Street.

17 Q You don't live there any more?

18 A No, I don't.

19 Q What happened when you got to the apartment where
20 you lived?

21 A They searched it.

22 Q With your consent?

23 A Yes.

24 Q Who was present in the apartment when they
25

1 dhh

Greenstein-direct

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2 got you there?

331 a

3 A Martin Kreiman.

4 Q Who was he?

5 A A roommate and friend.

6 Q He was a roommate and a friend of yours?

7 A Yes.

8 Q How long had you known him?

9 A About six or seven years.

10 Q What business, if any, does he have?

11 A He is a hairdresser.

12 Q He is a hairdresser?

13 A Yes.

14 Q At anytime were you in business with him, Mr.

15 Greenstein?

16 A The hairdressing business?

17 Q No, in any business.

18 A Yes.

19 Q What business was that?

20 A Cocaine.

21 Q He was a partner of yours?

22 A Yes.

23 Q As the result of this search was anything found,
24 to your knowledge?

25 A Yes.

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Greenstein-direct

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Q What was found?

A Small amounts of cocaine, approximately about a gram or two, and a little bag of marijuana.

Q Where had you gotten the cocaine that was found?

A Excuse me?

Q Where had you gotten the cocaine that was found by the agents in the search?

A From Gene Piper.

Q From Gene Piper?

A Yes.

Q Who is he?

A He was a friend.

Q A friend of yours?

A Yes.

Q Was he a friend of your roommate?

A Yes.

Q Did you meet him in any particular way?

A I met him through my roommate.

Q The roommate knew him first?

A Right.

Q After the search of your apartment, Mr. Greenstein, where, if anywhere, did you go?

A I went to 57th Street, which is the headquarters of the DEA.

Q Was Mr. Kreiman arrested?

333 a

A No, he wasn't.

Q Was he arrested some time after this?

A Yes, he was.

Q For what?

A I am not exactly sure what charge.

Q Was it pursuant to a charge in which you were involved?

A Yes.

Q That is, involving conspiracy to sell cocaine - is that correct?

A Yes.

Q Could you tell me, please, when, to the best of your recollection, Mr. Greenstein, when you first met Gene Piper?

A Approximately some time around the beginning of the summer. The exact date, I don't know.

Q The beginning of which summer?

A The summer of 1974.

Q Where were you when you met him?

A My apartment.

Q The same apartment you just described?

A 314 East 83rd Street.

Q What, if anything, occurred on the day or

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Greenstein-direct

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evening or whenever it was that you met him?

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A There were myself, Mr. Piper and Martin Kreiman were in the apartment and Mr. Piper came over and brought a little bit of cocaine that we looked at, sampled.

Q Did you have a conversation with respect to that cocaine?

A Yes.

Q What was that conversation, as best as you can recall?

A There were questions asked by myself to Mr. Piper about the quality, the quantity, the availability.

Q You asked questions of Gene Piper?

A Yes.

Q Did your roommate ask questions?

A I don't recollect. I mean, he must have, but I don't recollect.

Q What questions did you ask?

A How much was available.

Q What was the answer?

A Approximately \$1200 an ounce.

Q Who said that?

A Gene Piper.

Q What other questions did you ask him?

A How much was available.

335 a

Q What did he say?

A There was some available.

Q Did he say how much?

A Not any figure, no.

Q All right.

A Not to my recollection, no.

Q Did he indicate that he could supply that which was available?

A Yes.

Q What, if any, other questions did you ask?

A That's all I remember, to my recollection.

Q Did you ask anything with respect to the quality of that cocaine?

A Yes.

Q What did you ask?

A How good was it.

Q How good was what?

A The cocaine.

Q Which cocaine?

A That he had given to me.

Q Hadn't you tested it?

A All I could do was snort it.

Q Did you have any discussion with respect to the quality of cocaine which would become available?

1 dnb

Greenstein-direct

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2 A Yes.

3 Q What was that?

4 A It was said to be the same as what was given
5 to us to test.

6 Q I just want to recap this. He said that the
7 cocaine that you would get or was available to him was as
8 good as that which you had tested?

9 A Yes.

10 Q How good was that which you had tested?

11 A Pretty good.

12 Q Thereafter, Mr.Greenstein, were you ever supplied
13 with similar small amounts of cocaine from Mr. Piper?

14 A Yes.

15 Q And you refer to those small amounts by any
16 particular name?

17 A Tastes, more or less.

18 THE COURT: What was the word "tastes"?

19 THE WITNESS: Right.

20 Q On how many occasions, Mr.Greenstein, would
21 you estimate that you received tastes from Mr. Piper?

22 A I couldn't give you a fair estimate, but it was
23 a few times. I couldn't give you any number, any exact
24 number.

25 Q WAS it more than ten or less than ten?

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Greenstein-direct

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2 A Ten sounds all right. Maybe less, a little
3 less.

4 Q Did there come a time that Mr. -- Mr. Greenstein,
5 when you were supplied with amounts greater than that which
6 you have described as tastes?

7 A Yes.

8 Q When was that?

9 A Late summer or early fall.

10 Q Which years?

11 A '74, 1974.

12 Q Who delivered that to you?

13 A Gene Piper.

14 Q Were you personally the person who received it
15 as opposed to your roommate?

16 A I don't recall exactly who was there.

17 Q What is your best recollection?

18 A It was either myself, Mr. Kreiman who received
19 it.

20 Q Could it have been both of you received it?

21 A Very possible.

22 Q Had you tested or did you test any portion
23 of that cocaine?

24 A Yes.

25 Q When did you do that?

A As soon as it arrived.

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Q Did you have a conversation about it at that time?

THE COURT: Are we speaking of one occasion or more than one occasion?

I ask you, was this a single occasion you are speaking about now?

THE WITNESS: Yes, this is the early fall or late summer.

THE COURT: All right. Go ahead.

Q What was the conversation, Mr. Greenstein, would you tell us, please?

A How much he was bringing over, the quality, the quantity how much we owed him for it.

Q How much did you owe him for it?

A Approximately \$1200 an ounce.

Q How many ounces were there?

A Approximately two, to the best of my recollection.

Q Could it have been more or could it have been less?

A Yes.

Q What was the discussion you had with respect to the quality of that cocaine, Mr. Greenstein?

A We asked, you know, if it was the same as the

1 tastes that were given before.

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3 Q What was the answer?

4 A Yes.

5 Q You had tested it on that occasion as well,
6 would you say?

7 A Tasted it, yes.

8 Q Did it taste similar to that which you had
9 received before?

10 A Yes, it did.

11 Q That is, it was the same high quality?

12 A From what we could tell by looking at it and
13 tasting it, yes.

14 Q How could you tell by tasting it what quality
15 it was?

16 A You can only tell if it was good or bad. You
17 couldn't tell the exact quality of it.

18 Q What sensation does it produce in a taste?

19 A Can you repeat that?

20 Q How can you tell by your senses, Mr. Greenstein,
21 your smell or your taste or whatever, what the quality of
22 the cocaine is?

23 A Well, if you get high, it is good.

24 Q You get high?

25 A Yes.

1 dhh

Greenstein-direct

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2 THE COURT: Would you give us what was said
3 about the money?

4 MR. ENGEL: I believe there was testimony with
5 respect to that.

6 THE COURT: On this occasion? Then you review
7 it. I didn't get that in my notes. What was said about
8 the money, if anything, on this occasion?

9 Q Go ahead, Mr. Greenstein.

10 A It was approximately \$1200 an ounce.

11 Q For how many ounces again, Mr. Greenstein?

12 A Approximately two, to the best of my recollec-
13 tion.

14 Q Did Mr. Piper have occasion to tell you when
15 it was he expected to be paid?

16 A He wanted his money as soon as we could get
17 it to him.

18 Q Did he give you any directions with respect to
19 the cocaine he would supply?

20 A Excuse me?

21 Q Did he give you any directions with respect
22 to the cocaine he had supplied?

23 A You mean did he talk about where it came from?

24 Q No. Mr. Greenstein, did he tell you to do
25 or not to do anything to the cocaine?

1 A Oh, not to -- if he couldn't get rid of it not
2 to change the potency of it by adding other substances
3 to it.

4 Q Such as?

5 A Sugar.

6 Q Is that added to weaken it?

7 A Yes.

8 Q Directing your attention, if I may, Mr.
9 Greenstein, to later in the year 1974, did you again pur-
10 chase cocaine from Mr. Piper?

11 A True.

12 Q What was your answer?

13 A True.

14 Q Mr. Greenstein, on what basis can you tell the
15 Court and jury, please, that you purchased the cocaine from
16 Mr. Piper? What were the arrangements?

17 A It was fronted to us; which means it was left
18 with us and we didn't have to pay for it on the spot.

19 Q How would you pay for it?

20 A In cash. But not on delivery.

21 Q You would pay for it as soon as you were paid
22 for it?

23 A Yes.

24 Q When, to the best of your recollection, late
25

1 dhh

Greenstein-direct

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2 in 1974 did you receive cocaine from Mr. Piper?

342 a

3 A Early winter, winter.

4 Q Do you have a month?

5 A November or December, to the best of my recollec-
6 tion.

7 Q Did there come a time, Mr. Greenstein, in
8 December when you went anywhere?

9 A Yes.

10 Q Where did you go?

11 A Jamaica.

12 Q On what date do you remember going to Jamaica?

13 A Late in December, around the 20th.

14 Q Did this transaction of which you have just
15 spoken, did that occur before you went to Jamaica?

16 A Yes.

17 Q Where did this deal occur, Mr. Greenstein?

18 A In my apartment.

19 Q Who was present?

20 A Myself, Martin Kreiman and Gene Piper.

21 Q How much did you say, I have forgotten --

22 THE COURT: He hasn't said yet.

23 Q How much did you bring on that occasion?

24 A Approximately two ounces.

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Greenstein-direct

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Q Could have been more, could have been

less?

A Yes.

Q You are not sure?

A No.

(continued on next page.)

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2 Q What was the price?

3 A \$1200 an ounce.

4 Q Was that a definite figure in your mind?

5 A Give or take a few dollars either way, but very
6 close to it.

7 Q Did you have occasion that you tested that
8 cocaine?

9 A Yes.

10 Q When?

11 A As soon as it was delivered.

12 Q Who tested it?

13 A Myself or -- and Martin Kreiman.

14 Q You don't recall whether one or both of you
15 did?

16 A I remember I did.

17 Q You are certain you did?

18 A Yes.

19 Q Did Mr. Piper?

20 A Excuse me?

21 Q Did Mr. Piper test it?

22 A I don't recall if he did or if he didn't.

23 Q Did you sell that cocaine?

24 A One of the ounces.

25 Q You're sure of it?

1 dhe 2 Greenstein - direct

2 A Yes.

3 Q To whom did you sell that?

4 A John and Eddie.

5 Q Are those the same John and Eddie that you had
6 reference to in your testimony?

7 A Yes.

8 Q Did anyone go with you, Mr. Greenstein, to
9 Jamaica?

10 A Yes.

11 Q Who was that?

12 A Martin Kreiman.

13 Q How long did you stay there?

14 A A few weeks.

15 Q Excuse me.

16 A A few weeks.

17 Q When, if you recall, did you return?

18 A Approximately January 9 or 8, something like
19 that.

20 Q Is there a reason why you remember that?

21 A It was my birthday.

22 Q Which is which day?

23 A January 8.

24 Q After your return, did you hear again from
25 Gene Piper?

2 A Excuse me?

3 Q After your return from Jamaica, did you hear
4 again from Eugene Piper?

5 A Yes.

6 Q When did you do that, do you remember?

7 A Approximately a week or so after my return.

8 Q Could it have been longer than that?

9 A Possibly two weeks.

10 Q Did he tell you anything?

11 A That he had some more cocaine available if we
12 wanted it.

13 Q Did he say whether he had it available then?

14 A No. I don't recall.

15 Q Did he say when it was expected?

16 A Shortly, right.

17 Q Do you recall the day January 30, Mr. Greenstein,
18 of 1975?

19 A January 30 of 1975?

20 Q Yes.

21 A Yes.

22 Q What, if anything, happened on that day?

23 A I was given -- I believe Gene Piper came over
24 to the house with a large quantity of cocaine.

25 Q Mr. Greenstein, did you sell a quantity of

1 dhe 4 Greenstein - direct
2 cocaine to John, or Eddie on January 30?

347 a

3 A Yes.

4 Q Is that what happened on January 30?

5 A Right, yes.

6 Q And Dan was present again?

7 A Yes.

8 Q Was that cocaine of the same quality which you
9 sold which you had received?

10 A No.

11 Q Had you done something to it?

12 A Yes.

13 Q What had you done?

14 A Added something to it.

15 Q What?

16 A I don't remember exactly the substance that
17 was added to it.

18 Q Do you have any recollection at all what it
19 might have been?

20 A Probably sugar.

21 Q I will direct your attention, if I may, Mr.
22 Greenstein, to the week beginning Monday, February 3, 1975.

23 THE COURT: I'm sorry, I'm not clear. On this
24 January 30 occasion you made a sale, you say, to John and
25 Eddie?

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Greenstein - direct

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1 THE WITNESS: Yes.

2 THE COURT: Did you say that Dan was present?

3 THE WITNESS: Yes.

4 THE COURT: Had he been present before?

5 THE WITNESS: No.

6 Q Were you introduced to Dan on that occasion?

7 A Yes.

8 Q By John and Eddie?

9 A Yes.

10 THE COURT: Go ahead, Mr. Engel

11 Q Had you subsequently discovered or known that
12 John or Eddie were informants, Mr. Greenstein?

13 A I know now.

14 Q I will repeat that.

15 Directing your attention to the week beginning
16 Monday, February 3 of this year, do you recall that week?

17 A Yes.

18 Q Did you receive cocaine that week?

19 A Yes.

20 Q When, to the best of your recollection?

21 A February 3 was what day, a Monday?

22 Q A Monday.

23 A Probably I would say Tuesday, Wednesday or
24 Thursday of that week. I'm not sure exactly what day.
25

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Greenstein - direct

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349 a

1 Q That is the 4th, 5th or the 6th?

2 A Yes.

3 Q Did you personally receive it?

4 A No.

5 Q Who received it?

6 A Martin Kreiman.

7 Q Do you know how much it was?

8 A A lot.

9 Q How much?

10 A About a thousand grams.

11 Q Did you see Martin Kreiman on the day on which
12 that cocaine was received?
13

14 A That evening.

15 Q Did you have a conversation with him?

16 A Possibly.

17 Q Did you or did you not have a conversation with
18 him, Mr. Greenstein?

19 A Well, we spoke.

20 We definitely spoke, yes.

21 Q Were you shown the cocaine which had been
22 brought?

23 A Yes.

24 Q Where was it?

25 A It was in the closet.

1 dhe 7 Greenstein - direct

2 Q Which closet?

3 A The closet in the living room.

4 Q Was there more than one closet in the living
5 room?

6 A Yes.

7 Q Which of the two closets?

8 A The larger closet. One was smaller and one was
9 larger.

10 Q Did Martin Kreiman tell you from whom he had
11 received that cocaine?

12 A Yes.

13 Q Whom did he say he had received it from?

14 A Gene Piper.

15 Q Did he tell you when or under what circumstances
16 he had received it?

17 A It was fronted.

18 Q Did he say when?

19 A Excuse me?

20 Q Did he say when?

21 A That afternoon.

22 Q Can you describe any of the circumstances of
23 how it was received?

24 A Just that it was in the bag.

25 Q Did he tell you how much it was at that time?

dhe 8

Greenstein - direct

A How much was there when I came home?

Q Yes.

A Yes.

Q How did he know that, if you know?

A Excuse me?

Q How do you know how he knew how much it was?

THE COURT: I don't understand that.

MR. ENGEL: I withdraw it, Judge, I'm sorry.

Q You said Mr. Kreiman said it was a thousand grams; is that correct?

A Right.

Q How did he know?

A We didn't have a thousand grams when I got there. There wasn't a thousand grams when I got home.

THE COURT: I think there's a little confusion. Go back.

When you got home, is it correct that Mr. Kreiman showed you some cocaine?

THE WITNESS: Yes.

THE COURT: Were you able by observation or by-- were you able by observation to tell the amount or did he tell you the amount? I'm not clear what happened.

THE WITNESS: Oh, I looked at it and I was told how much was in the bag.

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THE COURT: All right.

You looked at it and then Kreiman told you --

THE WITNESS: How much was in the bag.

THE COURT: What did he tell you?

THE WITNESS: 500 grams.

THE COURT: All right.

Q Did he say how he knew it was 500 grams?

A It was weighed.

Q By whom?

A Himself.

Q Anybody else?

A Mr. Piper. He was there in the afternoon.

Q You mentioned earlier in your testimony, Mr. Greenstein, a thousand grams. Was another 500 grams available to you?

A Yes, there was.

Q Did you know or do you know now where that 500 grams was?

A I believe that when he came over in the afternoon there was a thousand grams, and that 500 were left with -- in other words, it was probable -- I wasn't there so this is just what I, you know, came about.

That there was the bag with a thousand grams. It was weighed and it was split up into two 500 gram bags.

1 dhe 10

Greenstein - direct

2 Q Do you know how many ounces that would be,
3 approximately, Mr. Greenstein, that 500 grams?

4 A Approximately a pound.

5 THE COURT: I'm sorry. What would be a pound?

6 THE WITNESS: 500 grams.

7 THE COURT: Would be about a pound?

8 Q Did you have occasion, Mr. Greenstein, to call
9 John and Eddie after you received this cocaine?

10 A Yes.

11 Q When, do you remember?

12 A Right afterwards. Within, I would say, 24 or a
13 48 hour period.

14 Q What is your best recollection, Mr. Greenstein,
15 if you have one, as to which of the three days it was, that
16 is, Tuesday, Wednesday or Thursday, that you received this
17 cocaine from Mr. Piper?

18 A Probably Thursday.

19 Q Thursday?

20 What was your conversation with John and Eddie
21 when you had a conversation with them?

22 A I told them that I had the merchandise in my
23 possession and that I wanted to get rid of it as soon as
24 possible.

25 Q Did you tell them how much?

dhe 11

Greenstein - direct

2 A Yes.

3 Q How much?

4 A 500 grams.

5 Q Did you see them at any time during the period?

6 A Possibly just to give them a taste of what was
7 there. Of -- a taste of the bag that I had so they would
8 know that it was -- what it was.

9 Q Did that happen? You said possibly.

10 A Yes.

11 Q It did happen?

12 A I don't recollect what day, but I believe it
13 happened, yes.

14 Q Were they with anybody?

15 A I believe one night it was probably, to the best
16 of my recollection, Thursday night or Friday night or possi-
17 bly even Saturday night that they came over and they told
18 me the person with the money was downstairs in the car.

19 Q Who was that?

20 A That was Danny.

21 So I made up a tinfoil package and went down-
22 stairs and gave it to him.

23 Q Where did that occur that you gave it to him?

24 A On 83rd Street.

25 Q Between Second and Third Avenue in a car?

2 Q In a car?

3 A Yes.

4 THE COURT: Did you go down to the car or did you
5 just give it to them to go down?

6 THE WITNESS: I went down and I got in the car.

7 THE COURT: All right.

8 Q Did you have a conversation with John, Eddie or
9 Dan at that time?

10 A In the car?

11 Q Yes.

12 A Yes.

13 Q What was that conversation?

14 A I was telling them how much I had, trying to
15 find out how much they wanted, and a price.

16 Q What price did you agree on, do you remember?

17 A There was no price agreed on at that time because
18 they weren't sure how much they wanted or how much money
19 they could get up.

20 Q Did you agree to meet with them later?

21 A That evening?

22 Q Yes.

23 A We didn't meet again that evening.

24 Q Did you agree at the time that you had the meet-
25 ing to meet at a future day, is what I am asking?

1 dhe 13

Greenstein - did

2 A Yes.

3 Q When?

4 A It was tentatively set for Monday sometime.

5 Q Did you meet on Monday?

6 A Monday evening was when we met.

7 Q That was the arrest which you described, is that
8 correct?

9 A That's correct.

10 Q After your arrest, the following day, did you
11 see Martin Kreiman?

12 A The following day?

13 Q Yes.

14 A Yes.

15 Q Did he tell you anything?

16 A Yes.

17 Q What did he say?

18 THE COURT: There's no problem with this conver-
19 sation?

20 MR. ENGEL: No, Judge.

21 THE COURT: Okay.

22 I want to recess in just a few minutes to avoid
23 us having -- we have to take a break this morning.

24 Q What was that conversation?

25 A Repeat the question.

1 Q Your conversation with Martin Kreiman.

2 A Well, there was -- I wanted to know what happened
3 to the rest of it, that was in the afternoon.

4 Q You wanted to know?

5 A Yes.

6 Q What did he say?

7 A Flushed down the toilet.

8 Q How much was it that he flushed?

9 A Approximately seven ounces.

10 Q Was that seven ounces in the apartment at the
11 time of the search, to your knowledge?

12 A Yes.

13 Q Where was it?

14 A In the closet.

15 THE COURT: I'm confused, I'm sorry.

16 This was the day following your arrest, right?

17 THE WITNESS: Yes.

18 THE COURT: And you asked him what?

19 THE WITNESS: There was approximately 15 ounces
20 altogether in the house. I had -- went out with eight,
21 approximately eight ounces.

22 When I got arrested, I was arrested with eight
23 ounces. That left another seven ounces.

24 THE COURT: Let me get that. You were arrested

1 dhe 15

Greenstein - direct

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2 with eight ounces on your person?

3 THE WITNESS: It was on the floor.

4 THE COURT: In other words, you were arrested
5 and then you were taken to the apartment, right?

6 THE WITNESS: Right.

7 THE COURT: And you are saying to me that the
8 eight ounces you are referring to was found on the floor.

9 THE WITNESS: On my person.

10 The eight ounces that I was arrested with. But
11 there was another seven ounces in the apartment.

12 THE COURT: Was that found in the search?

13 THE WITNESS: No.

14 Q Where was it --

15 THE COURT: Just a second.

16 MR. ENGEL: I'm sorry, Judge.

17 THE COURT: Go ahead, Mr. Engel.

18 Q Where was it, if you know, Mr. Greenstein, this
19 approximately seven or eight ounces that was left in the
20 apartment?

21 A I believe it was in the closet.

22 Q The same closet you have described earlier in your
23 testimony?

24 A Right.

25 THE COURT: Again, what was it about the conver-

1 dhe 16

Greenstein - direct

2 sation with Kreiman? I didn't understand before.

3 Q Would you tell the Court and jury, Mr. Green-
4 stein.

5 A I asked him what happened to the other seven
6 ounces.

7 Q And he told you?

8 A It was flushed down the toilet.

9 Q Did he say when?

10 A A few seconds after the agents left the apart-
11 ment.

12 Q Excuse me.

13 A A few seconds after the agents left the apart-
14 ment.

15 THE COURT: Any time you are ready for a break.

16 MR. ENGEL: I'm ready absolutely now.

17 THE COURT: All right.

18 Ladies and gentlemen, we will recess now until
19 2 o'clock.

20 If you can withdraw, I will speak to the lawyers
21 for just a moment. So everybody hold their place except
22 the jury.

23 (Jury excused.)

24 THE COURT: I just wanted to speak about this
25 subject.

1 dhe 17
2 We have a number of spectators here and you will
3 naturally be coming and going, if you attend the trial, and
4 it is possible that you will be on an elevator or in the
5 court or with members of the jury, and it is possible that
6 you won't even know that they are present because you might
7 not recognize them.

8 Now, I'm going to direct everybody present, and,
9 of course, I will probably issue this reminder if any new
10 people come into the trial, but you are directed to avoid
11 discussing anything about this case, the personalities
12 involved, anything at all while you are on the elevators or
13 in the corridors at least, unless you are absolutely clear
14 that no one other than people you know are present.

15 In other words, if two people get together out
16 in the corridor and they absolutely know that no one is
17 within earshot, they can certainly talk about the case or
18 anything they want, because my effort is to insulate the jury
19 and I don't think the jury will use the public restrooms, but
20 again, in the rest rooms I would ask you to do the same
21 thing.

22 And, of course, I'm sure the parties, the defend-
23 ants and the attorneys, understand that without being told.

24 All right. We will adjourn now until 2 o'clock.

25 (Luncheon recess.)

AFTERNOON SESSION

2:10 p.m.

(Jury present.)

THE COURT: We will wait for the Government attorneys, who I hope will be here in the near future.

MR. ROTHBLATT: They were around. I think they went down to get some sort of tape.

THE COURT: All right, would you call them.

(Pause.)

THE COURT: I expect the Government attorneys, as well as all other attorneys, to be here at the appointed time and if you are not here you will run the risk of having our case dismissed.

MR. ENGEL: I understand that, Judge. I was here at 2 o'clock and sought permission from your clerk to leave the court to get a tape recording and I was told I could go, so I did.

THE COURT: That was a misunderstanding.

Please leave somebody here to represent you while you are down getting something. I am sorry if there was a misunderstanding, I apologize.

MR. ENGEL: I apologize as well.

THE COURT: Okay, let's go.

MR. ENGEL: We just need Mr. Greenstein back.

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2 S T E V E N G R E E N S T E I N, resumed.

3 CONTINUED DIRECT EXAMINATION

4 BY MR. ENGEL:

5 Q Mr. Greenstein, I would like to show you what
6 has previously been marked as Government's Exhibits 5, 6 and
7 7 for identification.

8 Would you look at each one of those for a
9 second, please.

10 THE COURT: The numbers are 5, what?

11 MR. ENGEL: They were 5, 6 and 7 for identifi-
12 cation.

13 Q Do you recognize Government's Exhibit 5, first?

14 A Yes.

15 Q Your answer?

16 A Yes.

17 Q What is it?

18 A It is a tape.

19 THE COURT: Wait a minute, speak over to the
20 jury and Mr. Engel will hear you in any event.

21 Q What is Government's Exhibit 5?

22 A It is a tape.

23 Q Have you heard that tape?

24 A Yes.

25 Q What is Government's Exhibit 6, if you know?

1 rge

Greenstein - direct 363 a

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2 A A tape.

3 Q Have you heard that tape?

4 A Yes.

5 Q And Government's Exhibit 7?

6 A A tape.

7 Q Have you heard it?

8 A Yes.

9 Q In each case what appears on those tapes?

10 A Phone conversations.

11 Q Who are the participants in the phone conver-
12 sations?

13 A Myself and Gene Piper.

14 Q In each case?

15 A Yes.

16 Q With respect to Government's Exhibit 6 for iden-
17 tification, is there more than one conversation on that
18 tape?

19 A Yes.

20 Q How many are there?

21 A Two.

22 Q When did you listen to Government's Exhibits 5,
23 6 and 7?

24 A In your office.

25 THE COURT: I don't think the jury is hearing

1 rge

Greenstein - direct

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2 you so as much as possible, obviously, Mr. Engel, you stand
3 back and whether he is standing back or not you make a great
4 effort to speak loudly.

5 THE WITNESS: Okay.

6 THE COURT: How many conversations are there in
7 Exhibit 6?

8 THE WITNESS: Two.

9 THE COURT: Okay.

10 Q You said you listened to these tapes, is that
11 correct?

12 A Yes.

13 Q Where did you listen to them?

14 A In your office.

15 Q When did you listen to them?

16 A Yesterday and the day before.

17 Q How many times have you listened to these tapes,
18 roughly speaking?

19 A Quite a few.

20 Q With respect to Government's Exhibit 5, and I
21 will show it to you, when did the conversation recorded
22 thereon take place?

23 A February 11.

24 THE COURT: '75?

25 THE WITNESS: 1975, your Honor.

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Greenstein - direct

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Q I show you Government's Exhibit 6. When did the conversations on that occur?

A On the 12th and 13th of February, 1975.

Q The conversation on Government's Exhibit 7, showing you the exhibit, when did that take place, if you know?

A On February 14, 1975.

Q With respect to each of those exhibits, do you recall the conversations which they record?

A No right at this -- I would have to look at a transcript.

Q Do you recall having the conversations involved?

A Yes.

Q With Mr. Piper?

A Yes.

Q On or about the dates you have just described?

A Yes.

Q Showing you Government's Exhibits 5A, 6A, 6B and 7A for identification, I would like you to look, please, at these for a minute.

Have you looked at each one of them?

THE COURT: What's the question?

MR. ENGEL: The question, Judge, was an instruction, with the leave of the Court, that he would look at

1 rge Greenstein - direct

2 each one of these exhibits.

3 THE COURT: Have you looked at them now?

4 THE WITNESS: I am looking at all of them.

5 Q Would you look at each one of them, please,
6 Mr. Greenstein?

7 A You want me to read each one?

8 Q Look at them and see whether you can identify
9 them.

10 Have you looked at each exhibit I have just
11 listed?

12 A Yes.

13 Q First with respect to Government's Exhibit 5A,
14 Mr. Greenstein, what is Government's Exhibit 5A?

15 A A phone call from me to Gene Piper.

16 Q On what date?

17 A February 11, 1975.

18 Q It is a transcript -

19 THE COURT: To save time, are these written
20 transcripts of the tapes? Are they, Mr. Greenstein?

21 THE WITNESS: Yes.

22 Q Is 5A, with your permission, Judge, the tran-
23 script which reflects Government's Exhibit 5?

24 THE COURT: These are the transcripts of the
25 respective tapes, is that right?

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Greenstein - direct

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THE WITNESS: Yes.

Q Now, 6A and 6B are the transcripts with respect to Government's Exhibit 6 and 7A with respect to Government's Exhibits 7?

A Yes.

(Continued on next page.)

1 mksr

Greenstein - direct

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2 Q Now Mr. Greenstein, are the tapes which you have
3 listened to complete and accurate recordings of the con-
4 versations which you recollect having?

5 A To the best of my recollection, yes, they are.

6 Q And are the transcripts, Mr. Greenstein,
7 complete and accurate transcripts of the recordings of each
8 one respectively?

9 A To the best of my recollection, they are.

10 Q In fact, you have participated in editing those
11 transcripts, have you not?

12 A Yes, I have.

13 MR. ENGEL: At this time, your Honor, I would
14 like to distribute the earphones to the Court personnel
15 and to offer the exhibits once they are played.

16 THE COURT: All right.

17 MR. MC CARTHY: May we have a side bar, your
18 Honor?

19 THE COURT: Are we going to have the earphones
20 passed around, is that the idea?

21 MR. ENGEL: Yes.

22 THE COURT: Can someone distribute the earphones
23 while we are having the side bar?

24 [Following at the side bar:]
25

1 2 mksr

Greenstein - direct

2 THE COURT: What is the problem?

3 MR. MC CARTHY: The problem, first of all,
4 Judge, is I object to the use of the transcript under
5 these circumstances. One, we have not had an opportunity
6 to hear any of the conversations except one, and that is
7 the one on February 14, which is Government's Exhibit 1A,
8 so we have not had an opportunity to examine the trans-
9 cripts to determine whether or not they are accurate or
10 to put in our own suggestions.

11 Secondly, I would object to the transcripts
12 going in, as to who is saying what -- that should be the
13 proper subject of testimony by Mr. Greenstein.

14 THE COURT: This witness has testified that
15 these are accurate transcripts, and that obviously involves
16 a transcript of who said what. It would have been desirable
17 to have defense counsel had the opportunity to listen
18 to these tapes or to comment on them.

19 Have you heard them and are there any problems?
20 Are they good recordings?

21 MR. ENGEL: I have done most of the final
22 editing of these myself.

23 THE COURT: The only thing we can do is just
24 listen as we go along. If there are any problems we can
25 correct them.

1 3 mksr

Greenstein - direct

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2 MR. MC CARTHY: The second is, I would also
3 object because many of the conversations are in effect
4 narrative statements by Mr. Greenstein, and mere
5 monosyllabic answers by Mr. Piper. I would submit under
6 these circumstances these are not co-conspirator state-
7 ments in furtherance of and during the course of the
8 conspiracy, because at this point in time Mr. Greenstein
9 was not a member of the conspiracy but as a Government
10 agent, and under these circumstances it would be pure
11 hearsay.

12 MR. ENGEL: Your Honor, Piper's statements
13 on the tapes are statements of a co-conspirator at this
14 time, and Mr. Greenstein's statements are obviously neces-
15 sary to gauge the meaning of Piper's statements, and both
16 witnesses, as the defense well knows, will be available
17 for cross-examination, so it is no hearsay problem with
18 respect to these tapes.

19 THE COURT: I will overrule that objection.
20 Unless something by the witness is improper during the
21 course of listening to the tapes, I will have to take the
22 representation of the Government that it is within the
23 rules.

24 MR. ENGEL: As a matter of procedure, Judge,
25 we would like to play them seriatim, one after another.

1 4 mksr Greenstein - direct

2 THE COURT: All right.

3 MR. ROTHBLATT: Judge, wouldn't it be better --
4 frankly, my only complaint is that we have only gotten
5 these transcripts this morning. It afforded us no oppor-
6 tunity to check it against the tapes so that we could
7 listen and perhaps there might be a different version.

8 THE COURT: I know, but I think to save time
9 we will listen along, and if there is a correction to be
10 made we can make it -- put up your hand, and if the tape
11 gets obviously bad and difficult or becomes difficult
12 we will stop playing it.

13 MR. ENGEL: Judge, at that time everything
14 will be --

15 THE COURT: All right, let's go.

16 MR. ENGEL: Okay.

17 [In open court:]

18 MR. ENGEL: Your Honor, if I might instruct
19 the jury how they can determine whether their headsets
20 are working.

21 THE COURT: Go ahead and instruct them.

22 MR. FLANNERY: To turn the headsets on, if it
23 is operating correctly, you will hear a slight hum when you
24 put it over your ear. Anyone who doesn't hear that hum
25 should ask for a substitute headset.

1 5 mksr

Greenstein - direct

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2 [Headset earphones distributed amongst
3 the jury.]

4 THE COURT: Are you furnishing transcripts, also?

5 MR. ENGEL: Yes, Judge.

6 THE COURT: Well, I had better rule on it.

7 You are offering exhibits 5, 6 and 7; 5A, 6A, 6B
8 and 7A.

9 MR. ENGEL: Yes, your Honor. We are offering all
10 those subject to the respective transcripts, subject to
11 objections by the defense.

12 THE COURT: Well, Exhibits 5, 6 and 7 are
13 received.

14 5A, 6A, 6B and 7A are received subject to the
15 following qualifications:

16 Defense counsel have not had the opportunity to
17 go over these transcripts and compare them with the tape,
18 and obviously I haven't.

19 The witness, as you have heard, testified that
20 the transcripts are accurate, but I want to tell you
21 two things:

22 In the first place, it is the tapes themselves
23 that are really the evidence here, and you listen to those
24 carefully. The transcripts are only aids to you in
25 understanding the tapes.

6 mksr

Greenstein - direct

1 If there is any place where the tape is not
2 intelligible or where it appears -- where the tape -- I
3 am sorry, if there is a place where the language on the
4 tape varies from the written transcript, we will do our
5 best to correct that, and I most certainly will entertain
6 suggestions from defense counsel as to any corrections.
7

8 All right.

9 MR. FLANNERY: If during the course of listening
10 to the tapes you find malfunctions or squeaks, sometimes
11 they do that when they are not working properly, so raise
12 your hand and we will try to get them working properly.

13 [Tape Exhibit 5 inserted in recording
14 machine by Mr. Flannery.]

15 THE COURT: Do I understand that these transcript-
16 ions were made after you had been arrested?

17 THE WITNESS: Pardon me?

18 THE COURT: These were telephone conversations
19 after you had been arrested, is that right?

20 THE WITNESS: Yes.

21 THE COURT: The status of these two exhibits --
22 and counsel can correct me if I am wrong -- I think
23 without getting too complicated, basically it is this, that
24 the statements of Mr. Piper here would be admissible into
25 evidence, speaking in a very general way, because the

1 7 mksr

Greenstein - direct

2 Government contends that at this time he was still
3 involved in attempting to sell narcotics. I am not saying
4 he was or was not involved. That is a question of fact
5 for you that the Government has to present its evidence
6 one step at a time, and it contends at this time that
7 Mr. Piper was still until arrest and still trying to sell
8 narcotics.

9 Mr. Greenstein had been arrested at this time
10 so he was no longer at that moment part of the alleged
11 conspiracy. He was arrested. His part was over, and he
12 was now cooperating with the Government, so the primary
13 focus here is on the statements of Piper. I mean, that
14 is a matter of common sense. He was the one who was still,
15 according to the Government's allegations, trying to sell.
16 However, one side of the conversation cannot be understood
17 without the other side, so you are hearing the whole
18 conversation and going to place the statements on paper
19 in context and make them intelligible.

20 Okay, let us go ahead.

21 MR. ENGEL: Your Honor, I will hand up 6B and
22 7A after we listen to the first few tapes.

23 THE COURT: Fine. Put your hand up when you
24 are starting.

25 [Plaintiff's Exhibit 5 tape now played on

the recording machine.]

[During the replaying the following occurred:]

MR. ROTHBLATT: Judge, I get a blank here.

THE COURT: Let us stop for a minute.

MR. ROTHBLATT: I did not do any more listening.

THE COURT: All right, let us get your set
adjusted.

I think, Mr. Rothblatt, as far as that goes,
it is helpful to start all over again.

MR. ROTHBLATT: It might be a good idea to
signal when the sound is on.

THE COURT: Okay, we will take care of that.

MR. FLANNERY: Your Honor, do you want me to
start from the beginning?

THE COURT: I think so. It is really hard to
get into it otherwise.

[Government's Exhibit 5 tape replayed.]

[During the playing a juror raises hand.]

MR. ENGEL: We have another complaint from a
juror, Judge, I am sorry.

THE COURT: Is there anybody else in the jury
who is having trouble? Anybody who has trouble please
put your hand up, whether it is a lawyer or anybody else,
and we will stop and start over. Okay, start over.

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Greenstein-direct

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(Tape replayed, Exhibit 5.)

3

(Tape played, Exhibit 6.)

4

MR. ROTHBLATT: Your Honor, may we have a bench conference?

5

6

THE COURT: Okay.

7

(At the side bar.)

8

THE COURT: Yes?

9

10

MR. ROTHBLATT: Your Honor, as I have been listening to this second tape for the first time, there are portions of it that are inaudible to me, that there appear to be a transcript of and there are portions where the wording, all I can speculate, might be of some help to the accused.

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THE COURT: Look, in the second tape the voice of Greenstein is a lot lower than the voice of Piper, but it is still audible and I would say that it is an accurate transcript, I have no doubt about it.

19

20

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23

24

MR. ROTHBLATT: Judge, here is my point about it. It is patently unfair for these transcripts and tapes to be thrown at us right now without giving us and our respective clients a chance to listen and it might be more meaningful to them, they might see words or meanings or interpretations that we can't possibly get.

25

THE COURT: These are really very, very

1
2 good tapes and very good transcriptions. In 6A the
3 voice of Greenstein was a little fainter as I said, but
4 these do not have the problems you run into so often with
5 tapes. They are awfully good. I just don't know. You
6 know, I think it might have been nice for you to have them
7 earlier, but I don't think there is any real violation
8 of your client's rights and I am going to go on with the
9 trial now.

10 MR. ROTHBLATT: Judge, I just want to make the
11 statement for the record. I don't think I made my point
12 clear.

13 THE COURT: I think you made it and I am really
14 rejecting the argument. I would appreciate that we
15 can talk about this at the end of the day if there is a
16 way for future tapes to be made available earlier, let's
17 try to do that.

18 MR. ROTHBLATT: I just want to register at
19 this point the difficulty that we are laboring under and
20 I will expand on it a little further at the end of the
21 day. I just wanted to make it clear at this point that
22 we object to the sudden throwing of these tapes on us; that
23 we are unprepared to listen to it.

24 THE COURT: I don't think it is all that
25 hard.

1 Let's go.

2 (In open court.)

3 (Exhibit 6, tape played.)

4 (Exhibit 7, tape played.)

5 THE COURT: Does that conclude the playing of
6 tapes?

7 MR. ENGEL: That concludes the playing of the
8 tapes, but I have a few questions which will relate to
9 some of the matters in the transcripts, so I will ask
10 everybody to keep their transcripts for the moment.

11 THE COURT: Okay.

12 MR. ENGEL: Judge, I believe before the tapes
13 were played you ruled that the tapes themselves were re-
14 ceived, but that the transcripts would be received subject
15 to comments and corrections by the defense, is that
16 correct?

17 THE COURT: I assume my attention will be
18 called -- they are received and I am not hearing any sug-
19 gestions for corrections, so let's go ahead.

20 MR. ENGEL: Fine.

21 (Government Exhibits 5, 6 and 7 were received
22 in evidence.)

23 (Government Exhibits 5A, 6A, 6B and 7A
24 were received in evidence.)
25

rgb-4

Greenstein-direct

1 Q Mr. Greenstein, there were several references
2 in the tape recordings to Long Island. What if anything
3 do you do on Long Island?
4

5 A That's where the factory where I manufacture
6 shoes is located.

7 Q Would you keep your voice up, please. Remember
8 you are speaking to the jury.

9 A That's where the factory where I manufacture
10 shoes is located.

11 Q There was a mention of a person by the name
12 of Eddie, your boss. Who is he?

13 A He is the owner of the company.

14 Q What is his name?

15 A Edward Dorf.

16 MR. ROTHBLATT: I am sorry, your Honor, I missed
17 that name.

18 THE COURT: Who is Eddie?

19 THE WITNESS: That is my boss who owns the com-
20 pany, Edward Dorf.

21 Q Does your job include traveling, Mr. Greenstein?

22 A Yes.

23 Q Where do you travel in your job?

24 A Up and down the east coast.

25 Q In the New York metropolitan area?

A Yes, and also outside the area.

1 Q On your trips whom do you visit?

2 A Stores, accounts.

3 Q Shoe stores?

4 A Yes.

5 Q Referring you, Mr. Greenstein, to page 6
6 of Government Exhibit 6B in evidence, in the middle of the
7 page, slightly below the middle of the page there is a
8 reference there "I'll have the money for the first. The
9 second I can have that night. As soon as I make my
10 delivery."

11 To what were you referring when you said the
12 first and the second?

13 A I don't see where you are pointing to. The
14 first number is the 500 grams that I originally had in the
15 apartment and the second is for more of the -- more
16 cocaine that we had wanted to get.

17 Q Now, how much was the more which you were going
18 to get?

19 A Approximately another 500 grams.

20 Q Showing you page 5 of Government Exhibit 7A
21 in evidence and referring you to the third line of that,
22 what did you mean by the word "half"?
23

24 THE COURT: I am sorry, where are you now?

25 MR. ENGEL: I am sorry, Judge, page 5 of

1 rgb-6

Greenstein-direct

2 Government Exhibit 7A.

3 THE COURT: Okay.

4 THE WITNESS: Repeat the question, please.

5 Q What did you mean by the use of the word "half"?

6 A Half would be half a kilo.

7 Q A half a kilo. Is that 500 grams?

8 A Yes.

9 Q Do you recall on page 1, Mr.Greenstein, of
10 Government Exhibit 7A, you referred to a person by the
11 name of Dominic.

12 THE COURT: Where is this again?

13 MR. ENGEL: The first page of Government Exhibit
14 7A.

15 Q Do you see that at the bottom of the page,
16 Mr.Greenstein?

17 A Yes.

18 Q Who is Dominic, if anybody?

19 A It was just a name, to the best of my
20 recollection, that I had to make up during the course of
21 conversation with Gene.

22 Q Was that name suggested to you by anyone?

23 A Well, I had to use a name and that was the
24 first name that just, you know, popped into my head.

25 Q When you say you had to use the name, what do

you mean?

A Well, I had to say -- you know, I had to say somebody, so I just said a name.

Q Why did you have to say somebody?

A I don't recall.

Q Did the agent suggest it, perhaps?

A It is a possibility.

(continued on next page.)

3 PM

1 mksr

Greenstein - direct

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BY MR. ENGEL:

Q Mr. Greenstein, you have spoken with me about the subject matter of your testimony here today?

A Yes, I have.

Q Several times during the past week and the weekend?

A Yes, I have.

Q With respect to your relationship with the Government, if there is one, since your arrest, has the Government made any promises to you since your arrest?

A From the time I got arrested?

Q Yes.

A There was a promise made the night I was arrested that if I cooperated --

MR. ROTHBLATT: Your Honor, I would object to any conversations at this point. I submit if we want to go into that that is a matter for us but not for the Government.

MR. ENGEL: Your Honor, if the defense won't go into it we will, but, at any rate, we have a right to establish the relationship of the witness on direct examination.

THE COURT: I will allow it.

MR. ROTHBLATT: This is conversation with the

1 2 mksr

Greenstein - direct

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2 U. S. Attorney, your Honor? The purest kind of hearsay
3 and self-serving.

4 THE COURT: Overruled.

5 BY MR. ENGEL:

6 Q Will you tell the Court and jury what promises
7 have been made to you, if any, Mr. Greenstein?

8 A On the night of my arrest --

9 MR. ROTHBLATT: Excuse me, but if we are going
10 to go into details we ought to have conversations, who
11 said what, not general conclusary remarks.

12 MR. ENGEL: Your Honor, the witness began by
13 saying, "On the night of my arrest." Maybe we can proceed.

14 THE COURT: You can do it as full as you want,
15 Mr. Rothblatt.

16 MR. ROTHBLATT: No, I say if we do it then we
17 ought to know the identification of the parties, not
18 conclusary remarks, not general promises -- who said what
19 so we can cross-examine specifically.

20 THE COURT: Mr. Engel, will you bring it out
21 fully?

22 MR. ENGEL: I will .

23 THE COURT: All right.

24 Q Directing you to the night of the arrest, Mr.
25 Greenstein, you mentioned in the beginning something

1 3 mksr

Greenstein - direct

2 about that. Did you have a conversation with the repre-
3 sentatives of the Government?

4 A The agent that arrested me.

5 Q Specifically?

6 A That if I cooperated it would be -- my cooperation
7 would be told to you and it may go to the judge, and to
8 anybody else involved.

9 Q By the use of the word "you", you mean a rep-
10 resentative of the United States Attorney's office?

11 A Whoever it was, the prosecutor.

12 Q And they in turn would make it known to the
13 judge, is that right?

14 A Yes.

15 Q And was that in fact done?

16 A I believe so, yes.

17 Q It was.

18 A Yes.

19 Q At the time you were sentenced?

20 A Yes.

21 Q Now with respect to -- you pleaded guilty to the
22 indictment in which you are named, is that correct?

23 A Yes.

24 Q And were you sentenced in that regard?

25 A Yes.

1 4 mksr

Greenstein - direct

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2 Q What was your sentence?

3 A Thirty days in prison.

4 Q And at the time of your sentence did the Govern-
5 ment representative make a record before the judge of
6 your cooperation with the Government?

7 A Yes.

8 Q And with respect to your testimony here today,
9 Mr. Greenstein, as opposed to when you were arrested, and
10 so forth, did the Government make any promises with respect
11 to your testimony here today?

12 A Yes, they did.

13 Q What were those promises?

14 MR. ROTHBLATT: Again, your Honor, I think we
15 are entitled to specific conversations, with whom.

16 MR. ENGEL: Judge, I would object. There is
17 a very specific reason why that should not come out, and
18 I think Mr. Rothblatt may have a smidgeon of an idea.

19 May I come to the side bar?

20 THE COURT: You just bring out the promises in
21 any way. All right.

22 A Will you repeat the question?

23 [Question read by the Reporter.]

24 Q What were the promises made with respect to your
25 testimony here today?

1 5 mksr

Greenstein - direct

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2 A That anything that came out I would not be
3 brought up on any other charges, that anything that I might
4 be saying now except the charge of perjury, and that was
5 to be brought out only by myself if I lied.

6 MR. ENGEL: May I have a second, your Honor?

7 THE COURT: Yes.

8 [Mr. Engel confers with Mr. Flannery
9 off the record.]

10 Q Just one last matter, Mr. Greenstein: When
11 you pleaded guilty in this case you entered a plea to
12 one count of the indictment, is that correct?

13 A Yes.

14 Q Do you remember which count that was?

15 A Conspiracy.

16 MR. ENGEL: Nothing further, Judge.

17 THE COURT: All right, cross-examination.

18 CROSS-EXAMINATION

19 BY MR. MC CARTHY:

20 Q Mr. Greenstein, you said that you pleaded guilty.
21 When did you plead guilty?

22 A When I went in front of the -- when it came time
23 to plead.

24 Q Do you remember when that was? Was that April
25 or May of this year?

6 mksr

Greenstein - cross

A I don't recall when I pleaded in court -- the first time I went -- I don't have the papers in front of me so I don't recall.

Q How long ago were you sentenced?

A Excuse me?

Q How long ago were you sentenced?

A What was I sentenced? One month.

Q How long ago were you sentenced?

A I believe sometime in April or May.

Q And isn't it a fact that you began your cooperation with the Government on February 10, 1975?

A Yes.

Q Now when did you first meet Mr. Piper?

A Sometime during the middle or the beginning of the summer.

THE COURT: What year?

THE WITNESS: Of 1974.

Q And, if you know, prior to that time did Marty Kreiman know Mr. Piper?

A I believe he did.

Q Did you sell any cocaine in the summer of 1974 for Mr. Piper?

A Late summer, early Fall -- I am not quite sure of the date.

1 7 mkst

Greenstein - cross

2 Q How many times did you receive any cocaine from
3 Mr. Piper?

4 A Three times -- wait a second, can I -- in what
5 kind of quantities are you talking about?

6 Q Well, in any quantities whatsoever.

7 A I couldn't really give you -- I couldn't recollect
8 the exact number of times.

9 Q Would you say it was more than a dozen times?

10 A Possibly .

11 Q And were all those times after the summer or
12 during or after the summer of 1942?

13 A After the summer.

14 Q By the way, prior to your entrance into the
15 courtroom today have you ever seen Mr. Samuel Glasser before?

16 A One time.

17 Q Where was that?

18 A When I went to, I think it was, to plead in
19 some court.

20 Q It was in this building, is that correct?

21 A Yes.

22 Q It was at an arraignment in this building?

23 A Yes.

24 Q Did Mr. Piper ever say that Mr. Samuel Glasser
25 was the source of his cocaine?

12 mksr

Greenstein - cross

BY MR. ROTHBLATT:

Q How long had you known Eugene Piper?

A How long?

Q Yes.

A From sometime during the summer of 1974 till
the present.

Q The summer. Could you place it a little bit
more specifically?

A When I first met him?

Q Yes.

A Sometime during the summer, early summer.

Q Now that was 1974?

A Yes.

Q I show you this magazine marked --

MR. ENGEL: Objection. Can we go to the side bar?

THE COURT: Yes.

[The following at the side bar:]

THE COURT: What is the problem?

MR. ROTHBLATT: My question is going to be,
your Honor:

"I show you this exhibit, this magazine, Defendant's
Exhibit A, and ask you whether you are familiar with the
article in this magazine about -- in which Mr. Piper is
pictured."

That is my question.

MR. ENGEL: Your Honor, I assume this article has to do with photographs of nude or semi-nude Mr. Piper during his employment as a model. Now it may -- it may have some relevance during the cross-examination of Mr. Piper -- may, but I doubt that. But it certainly has no relevance to this witness, and the fact of the matter is that he has said that he knows Mr. Piper, that he has dealt in narcotics with him. Whether he knows Mr. Piper poses in a nude fashion in a magazine like Penthouse or Play Girl is of absolute irrevelance to this case, and I object.

THE COURT: What is the relevance?

MR. ROTHBLATT: Your Honor, I want to show first the photograph in this magazine that Piper is a pretty sordid psychologically mixed-up individual. It shows him photographing himself in sexual intercourse with his girl friend that he sold for \$500. If they started this business relationship with Piper and he knew about this kind of psychological character, I want to show the kind of dealings, whether he would trust him, whether he would believe him, and I believe the jury has the right to know, since he was dealing in what their relationship was, and what his credibility or trustworthiness was.

14 mksr

Greenstein - cross

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2 THE COURT: This is such a patent attempt to
3 paint Piper in this manner -- this is the most strained
4 offer. I am going to sustain the objection, and I have
5 serious question whether you will ever be able to show
6 this material on Piper. Piper is not on trial, and if there
7 is anything relevant about Piper's character that is going
8 to come in, you are not going to be permitted to just
9 malign and abuse Piper per se, and I want to let you know
10 that right now.

11 That is the termination of it.

12 MR. ROTHBLATT: Judge, may I be heard on that?
13 This is a legal argument. May I be heard very briefly?

14 THE COURT: No. I have terminated the hearing.
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(In open court.)

THE COURT: I sustain the objection to the reference to the magazine. Would you please put the magazine down.

MR. ROTHBLATT: Yes, Judge.

THE COURT: Okay.

BY MR. ROTHBLATT:

Q Mr. Greenstein, I take it that the Government agents were equipped with tape recording equipment at the time these conversations were recorded between you and Mr. Piper.

A You asked me a question?

Q Yes.

A What is the question? I didn't hear what you said. It didn't sound like a question.

Q Let me repeat it.

Am I correct that at the time of these conversations that you had with Mr. Piper that were just listened to and transcripts read, I take it at the time the Government agents had tape recording equipment which permitted the recording of these conversations?

A True.

Q Now, at the time you had your first conversation with Government agents about the cooperation that you would give and what you would get in return, did the Government

agents record any of those conversations, yes or no?

A Do you mean the conversations that were made right after I was arrested?

Q Conversations with you concerning what they would do for you in return for your cooperation.

A Right after I was arrested?

Q That's right.

A Were there any -- no, they weren't taped. Not to my knowledge.

Q By the way, about how many conversations did you have with Government agents from the time of your arrest up until this date?

A With agents?

Q Yes.

A A few times.

Q I don't know what a few is. Could you help us? Is a few a dozen, two dozen, three? Give us a better number, if you can.

A Maybe 7, 10 times. Something like that.

Q During those seven or ten conversations --

A Maybe 5. Between 5 and 10. It is hard to give an exact number.

Q VErY well. During those five to ten conversations that you had with the Government agents was a tape

1 6 mksr

Piper - direct

2 your Honor.

3 E U G E N E S T A N L E Y P I P E R , called
4 by the Government, being first duly sworn, testified
5 as follows:

6 MR. ENGEL: Your Honor, I think Mr. Greenstein
7 should be excused. I am waiting for that to happen before
8 I proceed.

9 MR. ROTHBLATT: I am sorry, what was that?

10 THE COURT: Wasn't he excused from the courtroom?

11 MR. ENGEL: No, your Honor, there is a pending
12 question at the bench with respect to certain matters,
13 and I think as a precaution I am raising it at this time.

14 MR. ROTHBLATT: Well, my only request --

15 THE COURT: Mr. Greenstein, why don't you
16 wait in the witness room. There may be some possibility
17 that someone will recall you, and it is probably better
18 for you not to observe the testimony by other witnesses.

19 MR. ROTHBLATT: Thank you.

20 [Witness Greenstein leaves the courtroom.]

21 MR. ENGEL: May I proceed, Judge?

22 THE COURT: Yes.

23 DIRECT EXAMINATION

24 BY MR. ENGEL:

25 Q Mr. Piper, how old are you?

1 7 mksr

Piper - direct

2 A 27.

3 Q Where do you live?

4 A New York City.

5 Q Are you employed at the present time?

6 A I am.

7 Q And with whom are you employed?

8 A I work as an apprentice carpenter with Thomas
9 Reid in Brooklyn, New York.

10 Q Directing your attention to January 1970 do
11 you recall that month?

12 A Yes.

13 Q What happened to you in that month, if you
14 can recall?

15 A I was discharged from the Army.

16 Q Under what status?

17 A I was honorably discharged as a specialist,
18 Fifth Class.

19 THE COURT: What was that date?

20 MR. ENGEL: January 1970.

21 Q And how long had you been in the Army?

22 A Four years.

23 Q Did you have occasion in or about that period
24 of time to have anything to do with cocaine?

25 A I did.

8 mksr

Piper - direct

167

THE COURT: Just before we get into that,
I know you did say it but I want to get it in my notes.

What were you in the Army at the time of your
discharge?

THE WITNESS: I was a Specialist, Fifth Class.

THE COURT: What kind of specialist?

THE WITNESS: Communications.

MR. ROTHBLATT: I did not hear that.

[Record read by the Reporter.]

THE COURT: Now Mr. Piper, you speak up so that
everybody in the room can hear you.

THE WITNESS: Yes, sir.

THE COURT: All right, go ahead, Mr. Engel.

BY MR. ENGEL:

Q The pending question, Mr. Piper, was, in or
about that period did you first have any experience with
cocaine?

A I did.

Q What happened in or about that period?

A I sampled some at the apartment of a friend of
mine.

Q And what were you doing? Were you employed or
were you doing something at that time?

A I was a student.

1 9 mksr

Piper - direct

2 Q Where?

3 A Columbia University.

4 Q Now later that year, directing your attention
5 to the Fall of that year, did you have occasion --

6 THE COURT: Excuse me, the sampling incident,
7 was that after the Army or when?

8 THE WITNESS: After I was discharged.

9 THE COURT: All right.

10 Now start your question again, Mr. Engel.

11 MR. ENGEL: Yes, Judge.

12 Q During the Fall of that year, Mr. Piper, did
13 you have occasion to sell cocaine?

14 A Yes, I did.

15 Q On how many occasions?

16 A I believe two.

17 Q And how much did you sell, if you recall?

18 A I sold initially one gram, and the second and
19 third times -- not two times -- it was three -- I sold,
20 I believe, an eighth, and then a quarter of an ounce,
21 or possibly a quarter and then a half an ounce.

22 THE COURT: The second time was what?

23 THE WITNESS: The second time, your Honor,
24 was either an eighth or a quarter of an ounce, and the
25 third time was double the amount, either a quarter or

1 10 mksr

Piper - direct

2 one half an ounce.

3 THE COURT: Okay.

4 Q Now did there come a time when you stopped
5 attending Columbia University?

6 A Yes.

7 Q When was that, if you can recall?

8 A That was in -- excuse me -- January of 1971.

9 Q After you left, between the period, for instance,
10 January and May of 1971, did you have yet another occasion
11 to sell cocaine?

12 A I did.

13 Q And on that occasion how much did you sell?

14 A One half ounce.

15 Q And where were you living between January and
16 May of 1971?

17 A On Fire Island, New York.

18 Q In whose house?

19 A The house of Mr. and Mrs. Thomas Ervin.

20 Q Are they friends of yours?

21 A Yes.

22 THE COURT: And this was what period of time?

23 MR. ENGEL: This is January and May, 1971.

24 Q After that, where did you go, if anywhere?

25 A I went to California.

11 mksr

Piper - direct

Q Until when?

A October of 1971.

Q And in October what did you do?

A I came back to New York.

Q For what purpose?

A To attend the wedding of my sister.

Q And what is her name?

A Kelly Piper.

Q And whom did she marry?

A Sam Glasser.

Q Do you see him here in court today?

A I do.

Q Would you point him out, please?

A The gentleman right there [indicating.]

Q Describe him, please.

THE COURT: Let the record show that he identified Mr. Glasser.

MR. ENGEL: Thank you, your Honor.

Q How long had you known Mr. Glasser?

A I have known -- had known Mr. Glasser, I believe, for possibly five years.

Q When did you meet him?

THE COURT: Before now?

THE WITNESS: Before that time. That would be --

1 12 mksr Piper - direct

2 THE COURT: I did not understand. All right.

3 Q When did you meet him then, Mr. Piper?

4 A I believe it was in 1966.

5 Q And what was the occasion of your meeting, if
6 you recall?

7 A I don't remember the occasion. I don't remember
8 the occasion.

9 Q Were you introduced?

10 A Yes.

11 Q By anyone in particular?

12 A By my sister.

13 Q Were you seeing your sister at that time?

14 A Yes.

15 Q And what was he doing, if you recall?

16 A He was a student at Cornell University.

17 Q After you returned to attend the wedding of
18 your sister and brother-in-law in late 1971, what did
19 you do in New York?

20 A For a period of two months I did odd jobs,
21 and at the beginning of 1972 I began modelling and doing
22 commercial acting.

23 Q And did you have occasion to do anything else
24 during that period?

25 A Not that I recall.

1 13 mksr

Piper - direct

2 Q Any gainful employment?

3 A No.

4 Q Now, directing your attention to the year
5 1973 did you have a conversation with Mr. Glasser
6 concerning cocaine?

7 A I did.

8 Q Do you know when in 1973 that conversation
9 occurred?

10 A It was either November or December of that year.

11 Q What did you say and what did he say, to the
12 best of your recollection?

13 A He said that he had some cocaine and would I
14 be willing to sell some for him, and I said yes that I
15 would like to do that, I knew somebody, some people who
16 used it.

17 Q And did you use it yourself ?

18 A I did.

19 Q At that time?

20 A I don't recall -- I think I probably did, yes.

21 Q How often at that time, that is, at the time
22 of this conversation?

23 A I don't remember.

24 Q Had you ever previously discussed cocaine
25 with your brother-in-law prior to that conversation?

1 14 mksr

Piper - direct

2 A I believe so, I am not certain -- oh, excuse
3 me, I am sorry, yes, I had.

4 Q You had?

5 A Yes.

6 Q When had you done that?

7 A I had some cocaine that I had gotten while I
8 was at Columbia that I shared with Mr. Glasser, and we
9 talked about it.

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Q At that time?

A Some time at the end of 1973, I believe.

MR. MC CARTHY: Judge, maywe have a side bar?

THE COURT: Okay.

(At the side bar.)

THE COURT: All right.

MR. MC CARTHY: Judge, I move now to strike the testimony of Mr. Piper with respect to sharing cocaine with Mr. Glasser. It is certainly without the scope of the conspiracy and irrelevant today, and I move for an order from your Honor directing that no testimony be elicited by the Government indicating a use of cocaine by Mr. Glasser.

MR. ENGEL: Your Honor, at the time of the initial conspiracy, at the beginning of the conspiracy, Mr. Glasser and Mr. Piper had a conversation about cocaine. The purpose of eliciting the testimony with respect to a prior use of cocaine is only to color that testimony to make it appear that it didn't happen out of the blue.

THE COURT: Well, he has actually said that the sharing took place in late '73.

MR. ENGEL: No, he said the discussion about the sharing of it took place in 1973.

THE COURT: When was the sharing?

rgh-2

Piper-direct

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2 MR. ENGEL: The sharing incident occurred in
3 1970 when he was at Columbia. So, in other words, Judge,
4 all it does is show a prior act which would explain a
5 conversation.

6 MR. MC CARTHY: I think the conversation as testi-
7 fied to is explicit. It needs no coloring at this point.

8 THE COURT: If this was the subject of a
9 conversation in late 1973, you can draw out that conversa-
10 tion.

11 MR. ENGEL: That is all I have done.

12 THE COURT: He has testified that there was
13 the sharing in Colombia, and you have that in. I am not
14 going to strike it. You go ahead with your conversations.

15 MR. ENGEL: We will go ahead.

16 THE COURT: Motion denied.

17 MR. MC CARTHY: Is it clear, I would like it
18 to be clear that I am asking that any testimony with
19 respect to the use even during the period of the conspiracy
20 should be excluded in the testimony of an uncharged crime.

21 THE COURT: I think I am not going to issue a
22 blanket ruling because it does seem to me that any trans-
23 actions that these people have in cocaine have a
24 relationship factually to the sale, but I don't think you
25 can split them off.

1 So I will deny that motion. Okay.

2
3 MR. ROTHBLATT: Judge, while we are here I
4 would like to cover one bit of unfinished business. In
5 the course of my examination of Greenstein, and it may
6 very well come up with Piper, I asked about the conversa-
7 tions or who his attorney was and so forth and I think,
8 your Honor, this would be an opportunity to explain. -- The
9 purpose of those questions --

10 THE COURT: We can do that at 4:30. I
11 will hear that at 4:30, you just remind me.

12 MR. ROTHBLATT: Okay.

13 (In open court.)

14 THE COURT: I think I was confused about the
15 chronology and maybe the jury would have the same confusion.
16 The discussion -- if you could, please, Mr. Engel, go back
17 over the discussion about the use of cocaine because I
18 didn't get it in any time frame.

19 Q Mr. Piper, your testimony was that you had
20 previously used cocaine with Mr. Glasser, is that correct?

21 A Yes.

22 Q And that was in the year 1970, is that correct?

23 A Yes.

24 Q Then you had a conversation about that use
25 in late 1973, is that correct?

rgb-4

Piper-direct

1
2 A Yes.

3 MR. ENGEL: Is that clear enough, Judge?

4 THE COURT: Yes, thanks. That is clear.

5 Q At the time you had the conversation in late
6 1973, with Mr. Glasser, what were you doing at that time,
7 do you recall?

8 A How was I employed do you mean?

9 Q Exactly.

10 A I was continuing my modeling and acting and
11 was doing some writing.

12 Q In or about that time did there come a time
13 when you were employed at a restaurant?

14 A Yes. I was working at nights.

15 Q At the time you had the conversation with Mr.
16 Glasser?

17 A Yes.

18 MR. ROTHBLATT: Your Honor, I am sorry, I missed
19 the witness' answer. He said he was employed and then it
20 blanked out.

21 THE COURT: All right, let's have the last couple
22 of questions read.

23 (Record read.)

24 Q Where were you employed?

25 A I was a waiter at JP's Restaurant.

1 rqb-5

Piper-direct

408 2178

2 Q Where is that?

3 A Between 76th and 77th on First Avenue.

4 Q Did there come a time after this conversation
5 when you received a quantity of cocaine from Mr. Glasser?

6 A Yes.

7 Q How much after the conversation?

8 A I don't recall.

9 Q Where did that occur?

10 A It was either at my apartment or at the Mayfair
11 House. I am not sure which at this point.

12 Q What is the Mayfair House?

13 A It is a hotel on, I believe, 66th Street or 65th
14 Street.

15 Q And what?

16 A Off Park.

17 Q Was anyone present aside from Mr. Glasser at
18 the time that you received this cocaine?

19 A Yes. I believe Mr. Valverde was.

20 Q Do you see him in court?

21 A Yes, I do.

22 Q Would you point him out, please.

23 A This gentleman right at the end of that table.

24 Q To my left?

25 MR. ROTHBLATT: I will concede he identified the

1 rgb-6

Piper-direct

409 a 179

2 accused.

3 THE COURT: All right, go ahead.

4 Q How much did you receive at that time?

5 A I believe it was either an ounce or two ounces.

6 Q What did you do with it?

7 A I broke it up into smaller amounts and sold it.

8 Q What were the smaller amounts in which you sold
9 it?

10 A I am not sure at this point. I believe they
11 were either -- they were roughly a quarter or half ounces.

12 Q Did you sell all of them?

13 A No, I did not.

14 Q What did you do with the part that you didn't
15 sell?

16 A I kept some for my own use.

17 Q And you used it?

18 A I did.

19 Q Did you know Mr. Valverde prior to seeing him
20 at the time this cocaine was given to you?

21 A Yes.

22 Q How long had you known him?

23 A I believe it was a year.

24 Q Where did you meet him, do you remember?

25 A I don't remember.

rgb-7

Piper-direct

Q Do you remember meeting him through anyone or with anyone?

A He was a friend of Sam's. That's how I met him.

Q Did you know how Sam knew him?

A From school, I believe.

Q Which school?

A Cornell.

Q WERE they in business together, do you know?

A Yes.

Q What business was that?

A When I first met Mr.Valverde, he and Mr. Glasser were attempting to raise money for a mechanical device. I wouldn't say it was in a business other than trying to sell this machine.

Q Were they associated in any way when you met Mr.Valverde in an importing business?

A Initially I don't believe so.

Q Did there come a time when such a business occurred where they were together?

A Yes.

Q What was that business?

A They worked together as Vintage Vendors.

Q Do you know where the location of Vintage Vendors

was at the time?

A East 50th Street. I am not sure of the exact address.

Q What did your brother-in-law do for Vintage Vendors, if you know?

A I believe he was a legal consultant.

Q That is, he acted as a lawyer for them?

A Yes.

Q Did he go to law school?

A He did.

Q Where?

A University of Pennsylvania.

Q From that time in late 1973 until February of 1975, did you have occasion to receive cocaine from Mr. Glasser and Mr. Valverde?

A I did.

Q At what intervals generally?

A I would say it was roughly four times a year. Every three months or so.

Q At the time that these --

MR. MC CARTHY: Objection. Can we have as specific as possibly dates and times.

THE COURT: I think he was going to get into that. You will, won't you, Mr. Engel?

1
2 MR. ENGEL: I will.

3 Q With respect to these incidents or occasions
4 was there something that had happened just prior to your
5 receiving cocaine?

6 A I believe that -- yes.

7 Q What was that?

8 A I generally believe that they had -- one or
9 both had come back from South America.

10 Q Were you told that by them on various occasions?

11 A Yes.

12 Q One or both of them?

13 A Yes.

14 Q With respect to your employment at JP's Bar,
15 did you ever have occasion to sell cocaine there?

16 A Not there on the premises, no.

17 Q Did you make arrangements to sell cocaine
18 there?

19 A Yes.

20 Q With the customers?

21 A Yes.

22 Q What was your job?

23 A Could you be more exact?

24 Q What was your job at the bar?

25 A I was a waiter.

1 rqb-10

Piper-direct

2 Q You were a waiter?

3 A Yes.

4 Q Where did you get the cocaine which you gave
5 to the customers?

6 A From Mr.Valverde and Mr. Glasser.

7 Q Now, you mentioned, Mr. Piper, an occasion
8 where you received cocaine in your apartment, do you recall
9 that?

10 A Yes.

11 Q What happened on that occasion?

12 A I don't remember.

13 Q Who was present?

14 A I am not sure. I believe it was Mr. Glasser.

15 Q Was Mr. Valverde present?

16 A Not that I remember.

17 Q What is your best recollection?

18 A That he was not.

19 Q That he was not there. What was the purpose
20 of the visit?21 A I only have a very sketchy memory of the first
22 transaction.

23 Q Do you recall whether you were paid any money?

24 A Not to -- on the first occasion there was --
25 there came a time when Mr.Glasser and Mr.Valverde came to

1 rgb-11

Piper-direct

2 my apartment to pick up money, but not to bring cocaine.

3 Q So the first time which you referred to in
4 your testimony was the time when Mr. Glasser brought
5 cocaine, is that what you are saying?

6 A Yes.

7 Q Could you tell the Court and jury, please,
8 about the occasion when money was brought to your apartment.

9 A I had gotten three ounces of cocaine from Mr.
10 Valverde and Mr. Glasser and owed them \$1000 for each
11 ounce and paid them \$3000 which they came to my apartment
12 to pick up.

13 MR. MC CARTHY: Judge, may we have a time
14 as close as possible on this?

15 Q When, to the best of your recollection, Mr.
16 Piper, did this occur?

17 A This occurred in either the very end of 1973
18 or the beginning of 1974.

19 Q What were you doing at the time that Mr.
20 Glasser and Mr. Valverde came to your apartment?

21 A How was I employed, do you mean?

22 Q No. Were you doing anything in particular
23 inside in your apartment at the time of the visit?

24 A I can't remember specifically.

25 Q Do you recall shaving at that time?

1 rgb-12 Piper-direct

2 A Shaving?

3 Q Yes.

4 A No.

5 Q You don't?

6 A No.

7 Q Do you recall whether any cocaine was brought

8 A Yes.

9 Q At the time?

10 A Yes, I do, yes.

11 Q Was there cocaine bought?

12 MR. MC CARTHY: Judge, may I object to the
13 leading at this point unless the witness' recollection
14 is exhausted?

15 THE COURT: I will allow you to just take it as
16 patiently as you want to, Mr. Engel, but I think you
17 better avoid any leading.

18 MR. ENGEL: I will do my best, Judge.

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1 l mksr

Piper - direct

186

2 BY MR. ENGEL:

3 Q Were you given anything at that time when they
4 came to pick up the money?

5 A Yes.

6 Q What were you given?

7 A We were -- we had all -- we all sniffed some
8 cocaine.

9 Q And where had that cocaine come from?

10 A Mr. Valverde had some.

11 Q And what did he do with it?

12 A What did he do with it?

13 Q Yes.

14 A He brought it and took it back.

15 Q Did he give anything to anyone at any time?

16 A Did he?

17 Q Yes.

18 A We all had some, yes.

19 Q From Mr. Valverde?

20 A Yes.

21 Q Now when you dealt with Mr. Valverde and Mr.
22 Glasser initially, was there a manner in which you dealt
23 with cocaine, that is, was there an arrangement between
24 you on the one hand and Mr. Valverde and Mr. Glasser
25 on the other?

1 2 mksr Piper - direct

2 A Yes. I was always fronted or given the cocaine
3 on consignment and paid him back after I sold it.

4 Q And what was the price per ounce when you were
5 first dealing with cocaine?

6 A \$1,000 an ounce.

7 Q How much did you sell it for?

8 A \$1,200 an ounce.

9 Q That is, \$1,200 an ounce, whether you broke up
10 the ounce or not?

11 A Yes.

12 Q How often did you use cocaine during the period
13 yourself?

14 A I used it for about a -- I would say a three-week
15 period, when it was around, and during that time I would
16 use it regularly, I would say between five and sometimes
17 ten times a day.

18 THE COURT: When you are talking about --

19 THE WITNESS: Do you want me to explain it?

20 THE COURT: Was there one three-week period,
21 or did this three-week period occur on different occasions?

22 THE WITNESS: Each time it was available on
23 different occasions the period would last, I would say,
24 around three weeks each time.

25 THE COURT: After a delivery to you?

1 3 mksr

2 THE WITNESS: Yes.

3 THE COURT: All right, I will adjourn now until
4 ten o'clock tomorrow morning. The jury may go out, and
5 I will talk to the lawyers for just a minute.

6 Again, please don't discuss the case in any
7 way amongst yourselves or with any of your friends or family.
8 Good night, I will see you promptly at ten o'clock tomorrow,
9 and I hope we get started right on time.

10 [Whereupon, the jury left the courtroom.]

11 MR. ENGEL: Judge, may the witness be excused?

12 THE COURT: Yes, you are excused. Be back at
13 ten o'clock tomorrow morning.

14 [The witness left the courtroom.]

15 THE COURT: Okay. Now the point you raised
16 about Mr. Schmukler.

17 MR. ROTHBLATT: Yes, your Honor. What I intended
18 by that question was to obtain a waiver of the attorney -
19 client privilege from the witness so that if I contacted
20 Mr. Schmukler he could be free to discuss it.

21 THE COURT: That is a pretty broad request.
22 In other words, a waiver of the attorney - client privilege,
23 everything that Mr. Greenstein had communicated to Mr.
24 Schmukler ?

25 MR. ROTHBLATT: Concerning this case. I do not

1 4 mksr

2 want a general -- in other words, all of the testimony,
3 all of the dealings with agents, all of the dealings with
4 U. S. Attorneys.

5 THE COURT: So far as the agreement with the
6 Government, you can get that without going into a complete
7 waiver of the attorney - client privilege. I am sure the
8 Government -- that you are entitled to get that, but that
9 doesn't go all that way.

10 MR. ROTHBLATT: Let me explain to your Honor
11 my purpose. If, for instance -- and I am only stating
12 this hypothetically, because I wouldn't know until Mr.
13 Schmukler would talk or communicate with me. Let us assume
14 he made such statements that would be helpful to the
15 accused, certain statements concerning credibility or
16 lack of credibility of Piper or anybody else, but that
17 was told to Mr. Schmukler during the course of the
18 attorney-client privilege, and I found that I could use
19 that information. Now if Mr. Schmukler says to me,
20 "Look, Henry, I cannot tell it to you because that is an
21 attorney-client privilege", I want to be able to say that
22 he waived it in open court and he is free to discuss it.

23 MR. ENGEL: Your Honor, the Government's position
24 with respect to that is as follows: Mr. Rothblatt did not
25 elicit anything from Mr. Greenstein which would be a pre-

1 5 mksr

2 dicate for calling his lawyer as a witness. In the event
3 that he did elicit any conversation that Mr. Greenstein
4 had with his lawyer, or did on recall, for instance, where
5 he believes he can impeach Mr. Greenstein's testimony
6 by having his lawyer testify, then I think we could cross
7 that bridge when we come to it; but we have no offer of
8 any question that Mr. Greenstein should answer, and there
9 has been no testimony where he hasn't answered.

10 THE COURT: Mr. Rothblatt wants to interview
11 the lawyer.

12 MR. ENGEL: I have no objection to his inter-
13 viewing the lawyer, your Honor. I have objection to him
14 calling the lawyer on a collateral matter.

15 THE COURT: He wants to interview the lawyer,
16 like you would interview anybody.

17 MR. ENGEL: That is between him and Mr.
18 Schmukler.

19 THE COURT: Mr. Rothblatt can go and interview
20 or talk to Mr. Schmukler, and it seems to me it is up to
21 Mr. Schmukler to find out from his client if his client
22 waives privilege, and it is up to Mr. Schmukler to act
23 in accordance with the Canon of Ethics, and I am sure he
24 will, so that is where we will leave that.

25 Now, on the question of --

1 6 mksr

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2 Are you intending to offer any more tapes of
3 which you will have tapes?

4 MR. ENGEL: Yes, Judge, there are three more --
5 two of them are very brief, one of them rather lengthy.

6 THE COURT: Okay. I think it would probably
7 help if you could somehow make the transcript and the tape
8 available for checking overnight by defense counsel.

9 MR. ENGEL: Judge, those are in their hands
10 and have been since last week. The problem has only been
11 with respect to the tapes which came in through Mr.
12 Greenstein.

13 THE COURT: Well anyway, I think to obviate
14 that kind of problem we had today -- fortunately the tapes
15 today, it seemed to me, were awfully clear so I do not
16 think there is a problem.

17 In other words, you are telling me that you
18 will or that you have made available to defense counsel
19 all further tapes and transcripts that you intend to use,
20 is that right?

21 MR. ENGEL: That is right.

22 THE COURT: Okay.

23 MR. ENGEL: Yes, there is the problem about
24 a novel or short story which Mr. Piper wrote, and the
25 Government has marked this as Exhibit 3503 for identification

1 7 mksr
2 -- and I hand it up to your Honor at this time, and a copy
3 to defense counsel [handing] -- although I think we can
4 talk about this more responsibly in the morning once we
5 have a look at it; but it is the Government's position that
6 I will announce at this time that this is not 3500 material
7 and the witness should not be cross-examined about it,
8 because it is not a statement which relates to his direct
9 testimony -- but I just bring that to your attention at
10 this time.

11 THE COURT: You know, we all have a lot to do
12 without getting a witness on pornographic things. I want
13 to keep the case to the issues, and I do not want to get
14 off to a lot of side diversions.

15 I suppose his modeling career in a sense -- he
16 has testified about modeling. I would appreciate your
17 discussing among each other tonight -- just canvas each
18 other's position and see if you can get together. Maybe
19 we can meet at nine o'clock. I will try to get through
20 this thing tonight, this Exhibit 3503.

21 I want to get some ground rules established,
22 because Mr. Piper is not on trial, and I have seen defense
23 counsel just try to pillory these witnesses -- I am not
24 going to say that -- I am not speaking about anybody here,
25 but I have seen it happen in cases, and this has to be

1 8 mksr
2 kept within the bounds.

3 So what if Mr. Piper posed nude? I do not think
4 it -- it just seems to me in itself it doesn't make a bit
5 of difference.

6 So what if he tried to write a pornographic
7 novel? So what? This is a cocaine transaction. This is
8 a very serious case, and it involves, regardless of his
9 other activities, the question of whether he was buying
10 cocaine from Mr. Glasser and Mr. Valverde and reselling it.

11 What difference does it make that he was engaging
12 in some other activities part of this time?

13 To what extent do you intend to try to go into
14 this, Mr. Rothblatt?

15 MR. ROTHBLATT: Well, your Honor, your Honor
16 has expressed your feelings and I will try to express mine.
17 As I read the new Federal Rules of Evidence, I find that
18 they have liberalized --

19 THE COURT: Let us not talk about liberalization
20 of evidence. There are lots of rules. We focused on one
21 particular one at the recess, and it doesn't help me to
22 have a lot of talk about general liberal spirit.

23 MR. ROTHBLATT: All right, may I suggest this
24 to your Honor: The credibility of Eugene Piper is
25 critical in this case, I think we all agree --

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2 THE COURT: Of course it is.

3 MR. ROTHBLATT: -- and I think any evidence that
4 sheds light upon his credibility that will help this jury
5 assess his credibility --

6 THE COURT: How would any of these things do
7 that -- speaking about help? There are boundaries beyond
8 which you do not go.

9 MR. ROTHBLATT: All right, let me answer your
10 Honor's question specifically. This man testified that
11 he is an actor, he is a writer, he wrote fiction. If he
12 is a fiction writer and an actor, he could use his powers
13 of fiction and his powers of acting to impress this jury
14 as to his fiction writing and acting, and that jury is
15 entitled to know that in assessing his credibility.

16 MR. ENGEL: The answer is, was there anything
17 published.

18 THE COURT: It seems to me --

19 MR. ENGEL: The relevance is whether he pub-
20 lished anything, not whether he wrote about it.

21 THE COURT: No. The theory is because a man
22 writes fiction -- and I think it might be that he was
23 writing fiction -- all right, let us accept that for the
24 moment, just for the purposes of argument. Then do you
25 have to get into the entire work --

1 10 mksr

2 MR. ROTHBLATT: No.

3 THE COURT: -- and analyze its nature?

4 The thing I had -- the feeling I had, frankly,
5 and without any disrespect to you, Mr. Rothblatt, I have
6 the feeling that you wanted to get before this jury dis-
7 reputable conduct or what the jury might regard as generally
8 disreputable, immoral conduct so that they will feel,
9 "We have on the witness stand a generally immoral, dis-
10 reputable person."

11 Now I do not think that is fair game.

12 MR. ROTHBLATT: All right, your Honor, let
13 me answer that specific question -- that is one of my
14 purposes. That happens to be the New York Rule of Evidence.
15 If we are trying this case in the State Court there would
16 be no question --

17 THE COURT: Let us stick with the Federal Rules.

18 MR. ROTHBLATT: No. I am saying if we tried
19 it in the State Court there would be no question but that
20 we could do it. It seems to me based under the new rules,
21 I think we are permitted to do it under the Federal Rules.

22 THE COURT: Well, you read Rule 806.

23 MR. ROTHBLATT: Your Honor, I intend to read
24 it overnight and talk about it in the morning.

25 THE COURT: Okay.

1
2 MR. ROTHBLATT: Now let me answer your Honor's
3 question with respect to the other part. I appreciate
4 that your Honor pinpoints the question to me, and I can
5 answer it very specifically. Now I say my purpose in getting
6 this piece of fiction before this Court is not -- I am
7 getting away from his general credibility. Now I am
8 saying that the jury is entitled to know that this man
9 has a very vivid imagination. He writes fiction, and the
10 jury is entitled to know it in assessing his credibility.
11 I certainly know that he has testified on direct examina-
12 tion that he is an actor. The jury has a right to know
13 that he has acting ability --

14 THE COURT: Well, how much do you want to go
15 into that?

16 MR. ROTHBLATT: Reasonably, Judge. I do not
17 expect to do that unreasonably. If I do it unreasonably --

18 THE COURT: Are you seeking to introduce into
19 evidence the document, Exhibit 3503?

20 MR. ROTHBLATT: No, just to the extent --

21 THE COURT: All right, then I do not intend to
22 read it tonight. I do not enjoy reading that stuff, and
23 I do not have the time.

24 You point out what you want to refer to.

25 MR. ROTHBLATT: All right, that is all we intend

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2 to do.

3 THE COURT: How about this modeling thing?
4 Are you going to seek to introduce evidence about his
5 modeling activities?

6 MR. ROTHBLATT: Your Honor, I was going to
7 urge -- I think this particular Defendant's Exhibit A might
8 be relevant, very relevant to show the psychological
9 character and thinking of this witness, whose credibility
10 they have to assess, and I will try to pinpoint it in
11 some specific fashion under the new Federal Rules.

12 THE COURT: All right, we will leave it this
13 way: As I understand it -- and this has helped me to
14 understand your thinking -- you have these theories: [1]
15 That you are entitled under some phase of the new Federal
16 Rules to introduce evidence of general immoral, disreputable
17 conduct on the part of Piper. All right, that is Theory
18 No. 1.

19 Secondly, you take the view that you are entitled
20 to introduce evidence as he has attempted to write fiction
21 and that he has been engaged as an actor in order to
22 indicate to the jury that he might have abilities along
23 those lines which might affect his credibility. Okay.
24 You aren't going to go into immense detail on, you know,
25 everything -- the entire manuscript and the works and that

1 13 mksr

2 king of thing, but you will point out to me tomorrow how
3 you intend to use that.

4 MR. ROTHBLATT: Precisely.

5 THE COURT: All right. He has been asked
6 about being an actor and writer, so anyway that might be
7 able to be testified to within reason but not be prejudicial
8 or be too collateral.

9 I guess that is about it.

10 MR. ROTHBLATT: Your Honor, I would like to
11 make another point.

12 THE COURT: I am trying to make up a little
13 calendar. Have I covered the points that you just made?

14 MR. ROTHBLATT: Yes. There is one other point
15 I would like to cover. I would like to get back to the
16 question of attorney-client privilege because it may come
17 up.

18 THE COURT: All right.

19 MR. ROTHBLATT: I think, your Honor, only --
20 what shall I say -- not a part of what I had in mind by
21 these questions. My point in, let us say, speaking to
22 Mr. Schmukler, that perhaps my efforts will be the following:
23
24
25

1 This jury, for instance, has heard already
2 that he conferred -- that Mr. Greenstein had conferred
3 with his lawyer before he did anything and his lawyer
4 negotiated the terms of cooperation. It is our position,
5 your Honor, that that testimony having come out, I am
6 entitled to ask this of a witness who so testified:
7 "Are you prepared or do you waive the attorney-client
8 privilege concerning all of these conversations" so that
9 the jury knows that he doesn't -- does or does not. He can
10 say no, I don't want to waive it and that's the end of it
11 and if he says yes, I waive the attorney-client privilege,
12 then I can go to the attorney and say yes, he waived it
13 in open court and he can be free to discuss it with me.
14

15 THE COURT: But what concern is that of the
16 jury? The jury is not entitled to draw any inferences
17 from the fact he either waives it or maintains it. He
18 has got as much right to maintain the attorney-client
19 privilege as people have other rights.

20 MR. ROTHBLATT: Except, your Honor, that they
21 opened the door by testifying on direct examination
22 that his attorney negotiated the deal.

23 THE COURT: No, I beg your pardon. The
24 questioning of the Government, if I am correct, was in
25 general terms about what agreements were made.

1 rqb-2

2 The Government did not seek to get into the
3 details of who and how they were negotiated, isn't that
4 right?

5 MR. ENGEL: That is right, your Honor.

6 THE COURT: And you stood up and asked to have
7 the conversations.

8 MR. ROTHBLATT: Your Honor, he was the one
9 who brought it out. On direct examination it appeared
10 that he agreed to cooperate immediately. That was the
11 impression at least that I got of the direct examination.

12 THE COURT: No, I don't think that is correct.

13 MR. ROTHBLATT: Then on cross-examination it
14 developed that his attorney was the one. However,
15 your Honor, it is my position that where a witness appears
16 and is represented by counsel from the very beginning of
17 his dealings with the Government and in return for
18 which he is getting some "cooperation from the Government,"
19 we are entitled to explore the role of the attorney in
20 whether or not he is ready to waive his attorney-client
21 privilege in open court.

22 That is our position.

23 THE COURT: I am not going to go back on a
24 ruling I made. I am permitting you to explore with his
25 attorney, and I am sure his attorney will consult with

1 rgb-3

2 Mr. Greenstein -- I am permitting you to explore with the
3 attorney whether the attorney-client privilege will be
4 waived. Mr. Greenstein's attorney, Mr. Schmukler, is
5 the person you want to interview. Go to him.

6 Now, as far as confronting this witness on
7 the spot with a question about whether he waives the
8 attorney client privilege, first of all I don't think it is
9 of any concern to the jury.

10 Second of all, I think it is improper to ask
11 a person who is represented by an attorney suddenly on the
12 witness stand whether he waives the privilege. He ought
13 to have the opportunity to consult with his attorney. He
14 may not know fully what it means.

15 So I think under two grounds it is better to
16 pursue it the way I suggest.

17 MR. ROTHBLATT: Well, your Honor, I am suggesting
18 that because that issue will come up with Mr. Piper and
19 we ought to be able --

20 THE COURT: We will handle it the same way, so you
21 avoid asking such a question of Mr. Piper.

22 MR. ROTHBLATT: Perhaps they can do it over-
23 night and settle the question when he resumes the stand
24 tomorrow.

25 THE COURT: I cannot understand why it is

something to ask a person in front of a jury. It is a matter -- look, if you asked him and he made some answer I would then have to undertake to explain to the jury what the significance of the privilege is, his rights and you just will take care of this out of the presence of the jury.

MR. ROTHBLATT: Your Honor, could I just give you an example?

THE COURT: No, I have got another hearing.

MR. ROTHBLATT: All right, we will do it tomorrow.

THE COURT: Yes.

MR. ENGEL: Can I just raise one point? The case with respect to the suppression issue outside of the hearing of the jury is United States of America vs. James Henry Rollins, decided September 15 of this year, docket #742610, slip opinion at 6143.

THE COURT: I don't know what this even relates to?

MR. ENGEL: That is to the search warrant in the paper of these papers being seized outside of the scope of the warrant. We talked about it earlier.

THE COURT: All right, it is a recent decision.

MR. MC CARTHY: Judge, may I just say one thing?

THE COURT: Yes.

1 rab-5

2 MR. MC CARTHY: Firstly, may I ask, your
3 Honor, that with respect to the transcripts of the con-
4 versations, that the jury not be permitted to have them
5 during the trial. If they are relevant for the purpose
6 of aiding them in hearing the tapes, fine.

7 THE COURT: All right, that is a good point.
8 Let's collect the transcripts.

9 MR. ENGEL: I will collect them. I have one
10 more thing I must put on the record, Judge. At two
11 o'clock when I appeared late, I had run back to my office
12 to pick up a Government exhibit which should have been
13 marked with a 3500 number for Mr. Greenstein. I misplaced
14 it. I still cannot find it. I will attempt to find it
15 by the opening of business tomorrow. It is two brief five-
16 minute phone calls. Mr. Flannery has just found it and
17 it will be made available to the defense and we will
18 make Mr. Greenstein available for recall if that should prove
19 necessary.

20 THE COURT: I will meet at nine o'clock tomorrow
21 so we won't keep the jury. We will go over any and all
22 problems at nine o'clock tomorrow.

23 All right?

24 MR. MC CARTHY: Anything else including the
25 transcript, your Honor, because I have one other thing we

1 might be able to clear up tonight and therefore save
2 ourselves tomorrow.

3 THE COURT: We can't because I have naother
4 hearing and I am a half hour late.

5 MR. ROTHBLATT: Judge, I have one request.
6 Tomorrow morning I teach my class at law school ordinarily
7 from 8:00 to 9:50. Can we make it 9:15? I will
8 take my class through without a break and then I will come
9 right over.

10 THE COURT: Okay, 9:15.

11 (Adjourned to Tuesday, December 9, 1975,
12 at 9:15 A.M.)
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WITNESS INDEX

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1 dhsr

UNITED STATES OF AMERICA

- v s -

SAMUEL GLASSER and
JOSEPH F. VALVERDE.

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December 9, 1975

[9:25 a.m.]

[Trial resumed.]

[In the robing room.]

[Discussion off the record.]

THE COURT: We will just recapitulate a discussion we started off the record.

Mr. McCarthy was making a point about a tape. Why don't you review that.

MR. MC CARTHY: Basically two points.

THE COURT: What does this relate to?

MR. MC CARTHY: It is 1/ 4A and 4B.

THE COURT: These are tapes of conversations --

MR. MC CARTHY: The first tape is between Mr. Piper and Mr. Greenstein; that is 1A. The other two tapes are between Mr. Piper and Mr. Valverde and Mr. Glasser.

THE COURT: Okay.

MR. MC CARTHY: Mainly between Mr. Piper and Mr. Glasser.

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2 The first is that I ask that introductory com-
3 ments by the agent be deleted, which your Honor had granted;
4 and the second point is that I ask that those notations
5 on the transcripts on the left margin, indicating the name
6 of the person who is allegedly speaking, either Mr. Glasser
7 or Mr. Piper or Mr. Valverde, be deleted.

8 THE COURT: All right. As far as the deletion
9 of the remarks of the agents, that will be carried out,
10 as I understand it, Mr. Engel?

11 MR. ENGEL: The Government has no objection to
12 that whatsoever.

13 THE COURT: As far as the reference in the trans-
14 cripts to the speakers, if there is a proper foundation
15 I will permit that, as I did with the earlier transcripts.

16 Now, we also started in on the discussion of the
17 3503 document, which was a short story or something drafted
18 by Mr. Piper.

19 MR. MC CARTHY: Your Honor, just briefly, we
20 contend that this is in the nature of an autobiographical
21 sketch of Mr. Piper, and its relevance is -- or the reasons
22 that I believe he is one of the speakers, the main charac-
23 ter, a person by the name of Alan, is he is a Sagitarian,
24 lives in Barrio.

25 THE COURT: What is a Sagitarian?

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2 MR. MC CARTHY: A person who was born during
3 the sign of Sagitarious.

4 The person used to be in the Army, has a
5 stepfather, which is not unusual, but in this case we
6 suggest it is corroborative of the fact that it is auto-
7 biographical; uses coke, is an Ersatz writer, and is familiar
8 with the entire drug business, including quoting prices
9 on ounces, et cetera.

10 Also, we have information that one of the references
11 in that sketch is to a friend to whom he gave angel dust,
12 is totally true, and refers to one Dana Smith, a friend
13 of Mr. Piper who as a result of this transfer or distri-
14 bution was placed in Payne Whitney, either voluntarily
15 or involuntarily, which is apparently some type of home,
16 for two or three months.

17 MR. ENGEL: Payne Whitney is a psychiatric
18 clinic.

19 What is angel dust, Mr. McCarthy?

20 MR. MC CARTHY: I think you can ask Mr. Piper
21 that, because I frankly --

22 MR. ENGEL: Do you know what it is?

23 MR. MC CARTHY: I think this: It is a drug.
24 I was under the impression it was marijuana. I think they
25 call it PCP, some type of chemical. I also believe it is

a euphemism for LSD.

Now, whether that is true or not I am not a chemist and I just don't know. But I know this: It is referred to as an illegal drug.

MR. ENGEL: Is there a reference in 3503 to it?

MR. MC CARTHY: Yes.

MR. ENGEL: Where?

MR. MC CARTHY: Page 20.

MR. ENGEL: Where on Page 20?

MR. MC CARTHY: Sorry, Judge, Page 33 to 34.

Not only that, Judge, but the entire story is about his encounter with a girl by the name of Blanche, and which they pass coke back and forth. I am not saying that this is going to make or break our case as such, but I certainly think it might be relevant.

THE COURT: I do not see the angel dusting, I am sorry.

MR. MC CARTHY: Bottom of Page 33.

MR. ENGEL: Page 33, your Honor.

THE COURT: Oh, yes.

What is the position of the Government on that?

MR. ENGEL: The Government's position, I think, with respect to this story is that the defense may inquire of Mr. Piper about the story itself and his writing of

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2 fiction. I think they are entitled to bring out [a] that
3 he writes fiction and that fiction is the work of imagina-
4 tion.

5 THE COURT: You mean bearing on credibility?

6 MR. ENGEL: Right. And further, that he has
7 written fiction about his experiences in the cocaine trade,
8 if he says that in fact he has. In other words, they
9 can inquire about it.

10 Then I expect he will testify indeed that 3503
11 has some autobiographical meaning and element; and further
12 that you may inquire about the Dana Smith incident. You
13 know about the Dana Smith incident. I do not know. It
14 has to do with the witnesses dealing in controlled sub-
15 stances, and I think that that is probably relevant.

16 I would think, also, that they may go into the
17 references in the story to his either dealing or snorting
18 cocaine, and these were products of a febrile imagination.

19 But the Government's position is that the rest
20 of the story, the sexual elements and that sort of thing,
21 are not relevant and are collateral to the witness'
22 testimony.

23 THE COURT: It would help me to pin things to
24 rules. Just a general discussion of what somebody thinks
25 should go in does not help very much. We've got rules

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2 and they talk specifically about impeachment and methods
3 of impeachment.

4 MR. ROTHBLATT: Judge, would you excuse me
5 while I get my copies of the rules?

6 THE COURT: Okay.

7 Are you dealing now, Mr. McCarthy, under the
8 general rubric of impeachment?

9 MR. MC CARTHY: Yes. Not only that, without
10 going into a rule, because it is part of the theory of
11 the case, that is, not aside from the question of credi-
12 bility is not within the rules, that is, that we maintain
13 that the person who is identified in the story as Inca,
14 also referred to as "the man," which is a descriptive
15 term among drug people as indicating a person who is their
16 source, and he refers to Inca, who is South American,
17 apparently, and who is referred to as bending something --
18 it is not cocaine or drugs -- bending something in Uruguay,
19 our contention is we don't know. I have no way of getting
20 into Mr. Piper's mind.

21 But our contention will be that this man,
22 identified as Inca, is in fact his source.

23 THE COURT: All right. Just so I can get the
24 framework, you want to bring out on the substance, so to
25 speak -- you want to try to cross-examine him and conflict

any direct testimony that Glasser and Valverde are his sources?

MR. MC CARTHY: Right.

THE COURT: And try to get him to admit or come as close to admitting as possible that some other person referred to in the story is his source.

MR. MC CARTHY: Right.

THE COURT: So you would hopefully start out by asking him, and then if he denies it, you can confront him with the story and ask if that was the factual reference, and so forth, right?

MR. MC CARTHY: That is correct.

THE COURT: We are not going into the story as such?

MR. MC CARTHY: No, just to show there are --

THE COURT: It can be used to confront him if he denies?

MR. MC CARTHY: Right.

THE COURT: Okay. Then you have also got the general impeachment problem?

MR. MC CARTHY: That is correct.

THE COURT: And as far as the use of any proper question about the source, the topic we have just been talking about, unquestionably you can do that, as long as

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2 it is properly done.

3 On the impeachment, what are the rules you are
4 referring to? What are your propositions here?

5 I think we start with Rule 608, don't we?

6 MR. MC CARTHY: Yes, Judge.

7 THE COURT: All right.

8 Now, Rule 608(a) provides that the credibility
9 of the witness may be attacked or supported by evidence
10 in the form of reputation or opinion but subject to these
11 limitations:

12 "1. The evidence may refer only to character
13 for truthfulness or untruthfulness," et cetera, and the
14 rest of that passage is irrelevant until we get to this:

15 Part B says:

16 "Specific instances of the conduct of the witness
17 for the purpose of attacking or supporting his credibility
18 other than conviction of a crime, as provided in 609,
19 may not be proved by extrinsic evidence. They may, however,
20 in the discretion of the Court, if probative of truthfulness
21 or untruthfulness, be inquired into on cross-examination
22 of the witness (1) concerning his character for truthfulness
23 or untruthfulness; or (2) concerning the character
24 for truthfulness or untruthfulness of another witness as
25 to which character," and so forth. I do not think the

rest is relevant.

So, specific instances may, in the discretion of the Court, if probative of untruthfulness, be inquired into on cross-examination of the witness concerning his character for truthfulness or untruthfulness.

Now, we have got Rule 609.

"For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted," and so forth. And there are certain conditions imposed.

Of course, there is also the other element. If you get to criminal conduct, I think where you have an agreement by the Government to not -- I mean, I have not heard Piper all the way through, obviously. I forget, have I passed sentence on Piper?

MR. ENGEL: No, Judge. That is scheduled for January.

THE COURT: But let us suppose that the Government has made an agreement with Piper that they will not prosecute him for anything but certain specific crimes and they have made this agreement with him, and he has agreed to cooperate and to testify. Then it seems to me that -- and you know, I will hear from the Government on this, of course -- but it seems to me that you are entitled

1 to bring out other criminal conduct which would be affected
2 bu such agreement.
3

4 So I am just sitting here trying to ou line
5 the possible theories which appear valid to me. It seems
6 to me you have got Rule 608, you have got Rule 609, and
7 then you have got this other thing that I just talked about
8 introducing criminal conduct is one of the things referred
9 to in the agreement with the Government.

10 MR. MC CARTHY: We would also contend, Judge,
11 upon appropriate questions, that Rule 613 would also be
12 applicable. That refers to prior statements of witnesses.

13 THE COURT: Just any statement about any
14 subject in the world?

15 MR. MC CARTHY: No, Judge, only with reference
16 to if he should deny the prior use, which is involved. I
17 think, within the broad umbrella that we are talking about,
18 if he should deny the prior use of this, and if he should
19 deny the fact --

20 THE COURT: In other words, if you ask him a
21 question which you are permitted to ask him, and he gives
22 an answer, and then you can contradict him with a prior
23 statement, sure, that comes in.

24 MR. ENGEL: The difficulty, of course, is that
25 Mr. Piper, to the extent that this is the crunch I foresaw

1 11 dhsr

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2 with respect to 3503, it is concededly a work of fiction.
3 I turned it over to the defense --

4 THE COURT: Look, let me just interrupt you
5 for a second.

6 I am not getting to 3503 for a minute. I am
7 trying to figure out what you will be permitted to ask
8 him about his prior conduct. That is the first step we
9 come to.

10 You do not immediately throw in 3503 under any
11 event. You ask him -- well, wait a minute. Just take
12 it one step at a time. We have covered the point.

13 You can ask him about his source, and if he
14 denies it, you can confront him with this. If you do it
15 properly, you can confront him with 3503.

16 Now, the Government has conceded that, within
17 bounds, you can bring out that he is the writer of fiction
18 or has attempted to write fiction. Right?

19 MR. ENGEL: Yes, Judge.

20 THE COURT: Then if you try to get into details
21 about that fiction, that the Government objects to as being
22 prejudicial and beyond the scope of relevance, I may
23 intervene at that point, but we won't try and anticipate
24 all that.

25 As far as his conduct in prior drug sales,

1 prior drug usage, again, not getting to 3503 for the
2 minute, just on the subject of his drug related conduct.

3
4 MR. ENGEL: Judge, I think that they may inquire
5 as to any drug related conduct that he has testified to
6 on his direct examination or through the 3500 exhibits
7 they have reason to believe he engaged in, or if on a
8 good faith basis they have some other knowledge that the
9 Government does not have, that he dealt in narcotics and --

10 THE COURT: In other words, what is the reason
11 we are allowing this? We are allowing it, I take it, for
12 one reason: Principally because it would be prior
13 criminal conduct which would be covered by the Government's
14 agreement.

15 Isn't that right?

16 MR. ENGEL: Well, it may or may not be covered
17 by the Government's agreement. I think I will have to
18 inquire of Mr. Piper as to what that agreement is.

19 THE COURT: What is the agreement? You know
20 what it is.

21 MR. ENGEL: The agreement, Judge, is that his
22 cooperation will be brought to the attention of the
23 sentencing judge, and that is his agreement.

24 THE COURT: Have you agreed not to prosecute
25 him for things other than what are referred to in this

indictment?

MR. ENGEL: No.

THE COURT: You have not?

MR. ENGEL: No.

THE COURT: Okay. Then, what is the relevance of his prior --

MR. ENGEL: Practically speaking, the policy of our office is not to prosecute witnesses who tell us about narcotics dealings that we otherwise would not know about.

MR. MC CARTHY: In that sense, Judge, it has to do with his motive and interest, because if he expects to --

THE COURT: I would not deny that. I mean, this is a very familiar ground of cross-examination.

MR. ENGEL: Of course.

THE COURT: But again, I wish we could be reasonably clear on the relevancy. In going into his prior narcotic conduct, you have raised it to a certain extent. That is just the background.

MR. ENGEL: That is right.

THE COURT: In other words, you would not object either as background or for whatever reason; you would not object to the defense lawyers going into prior

conduct of any kind? I guess that is the basic --

MR. ENGEL: That is basically it, Judge. Beyond a certain point these things tend to be hit pretty hard, and you could go on and on and on about it.

THE COURT: But within the facts?

MR. ENGEL: Within the bounds.

THE COURT: Yes.

Now, if there are relevant instances of narcotic conduct which you ask him about and which he denies or tells you something that you believe is untrue, based on this 3503, then the 3503 becomes relevant again.

Presumably you can ask him, if you are dealing with a relevant subject, you can ask him if the material in 3503 was biographical and if it happened, and that is the way it would be used, right?

MR. MC CARTHY: That is right, Judge.

Judge, may I ask: In other words, what I would like to do is also, if that becomes the case, draw out certain statements allegedly made about the main character; in other words, that he was, as I said, a Sagitarian, items which we know in fact to be applicable to Mr. Piper.

THE COURT: What difference does it make that he is a Sagitarian?

MR. MC CARTHY: The fact that the main person

1 15 dhsr

450 a 220

2 in the story fits the description of Mr. Piper.

3 THE COURT: You get into such minutia. He may
4 admit it is largely biographical.

5 MR. MC CARTHY: I am assuming he does not.

6 MR. ENGEL: If he were going to admit it,
7 you would not have it as 3500 material.

8 THE COURT: I get your point, but if he denies
9 it is autobiographical, you can probe him on that through
10 the astrology thing and whatever else.

11 MR. MC CARTHY: That is what I am assuming. It
12 is only on the fact that he denies it.

1 THE COURT: I get you. We get to the question
2 of his sexual habits or activities, modeling and so forth.
3 I don't see getting into that, any basis for getting into
4 that at all.
5

6 MR. MC CARTHY: The only argument I would make
7 is that he, Judge -- it only bears on truthfulness or his
8 character for truthfulness in this sense only, and that
9 is that at the time that he was engaged in these activities
10 he was "in love with another girl." And we believe had
11 made a commitment in the nature of a monogamous commitment
12 to her and that this indicates that he is untruthful, and
13 in that respect only it would be relevant.

14 THE COURT: Okay. I would reject that.

15 Have you got anything?

16 MR. ROTHBLATT: Yes, I would like to give this
17 additional thought. Your Honor, I think, neglected
18 to make reference to Rule 611(b), which I think is the
19 most appropriate section, "Scope of cross-examination."

20 THE COURT: Okay.

21 MR. ROTHBLATT: "A witness may be cross-examined
22 on any matter relevant to any issue in the case including
23 credibility."

24 Now, I would contend that the sexual conduct,
25 and specifically I am talking about the Viva pictures --

1 dnb-2

2 THE COURT: What do they involve?

3 MR. ROTHBLATT: That was that exhibit that we
4 marked for identification, that magazine, your Honor.

5 THE COURT: But I didn't see it. What does it
6 show?

7 MR. ROTHBLATT: It shows him posing in acts of
8 fornication for publication, for the world. What a great
9 lover he is.

10 THE COURT: Okay.

11 MR. ROTHBLATT: Now, it is my contention that
12 in a serious issue like this case, where the Government's
13 case rests almost principally upon the testimony of Piper,
14 and that this jury will have to assess the credibility
15 of Piper against the credibility of our clients, the jury
16 is entitled to have a total psychological profile of Piper
17 in order to assess his credibility.

18 It is difficult as it is to assess credibility
19 without knowing something about the witnesses involved.
20 And I think the rules of evidence had intended that cross-
21 examination should present to a jury, within reasonable
22 limitations, all of the psychological factors that go in to
23 make up this witness that might cause him to lie, exaggerate,
24 pick on his brother-in-law and do what he has to do.

25 And I think, as I suggested, the New York rule

1
2 dnb-3

3 under People against Sorg permit it without question, this
4 kind of act and this kind of cross-examination, and it
5 is my feeling that under Rule 611(b) it was intended to
6 liberalize that so that a jury can have a full psychological
7 picture.

8 THE COURT: I have no doubt but that you are
9 entitled to cross-examination of him on any matters which
10 would be reasonably probative as to his hostility to Glasser
11 or his mental ability to tell the truth.

12 The thing that I think I have got to weigh, and
13 I have got a duty to weigh it under Rule 403, is whether
14 evidence although relevant may have its probative value
15 substantially outweighed by the danger of unfair
16 prejudice, confusion of the issues, misleading of the jury
17 and so forth.

18 I think this is a prime example, and I will
19 certainly, you know, keep or be willing to review the matter
20 as we go along, and obviously I don't know everything that
21 is going to be raised on direct or cross at this point,
22 but it does seem to me in general that from what I know now
23 I would want to keep out the material about sexual conduct.

24 I think it comes within Rule 403, and I really
25 don't see that evidence about whether he posed in the nude

1 or posed in acts of fornication really gives any indication
2 that he is mentally or emotionally incapable of telling
3 the truth or prone to not tell the truth.
4

5 So I just am inclined not to allow that as far as
6 his hostility to Glasser. I think it is also very, very
7 peripheral and extremely tenuous probative value.
8

9 MR. ROTHBLATT: Judge, may I suggest the purpose
10 of Rule 403?

11 THE COURT: Yes.

12 MR. ROTHBLATT: So that we can give it some
13 thought. I strongly like Rule 403 and I think it was
14 intended not to protect prosecution witnesses but the defend-
15 ant. In other words, this was the rule that says that
16 sure you can cross-examine a defendant, but there is no
17 sense in getting into areas that would prejudice or becloud
18 the issue.

19 I think this was intended for his protection
20 so that a Judge could say, you know, let's assume my client
21 on the stand --

22 THE COURT: Well, you have all got 611(a) which
23 requires the Court to exercise reasonable control and
24 protect witnesses from harassment or undue harassment.

25 MR. ROTHBLATT: There is no question about it.
But I think 403 was intended when they said "to avoid

1 dnb-5

2 prejudice and confusion," I think that was intended to
3 protect the defendant, and I think that was intended for him,
4 not so much for prosecution witnesses, because the defend-
5 ant's liberty is at stake. The prosecution, no matter
6 how he is harassed and attacked, theoretically goes home
7 after he gets through testifying.

8 So I would suggest that to your Honor in consider-
9 ing the scope of cross-examination.

10 THE COURT: My main interest is in, you know,
11 having this trial have some order and clarity for both the
12 sake of the Government and the defendants. That is the
13 main object and I have that in mind.

14 This has been a helpful discussion. I think
15 we have some general idea of the ground rules.

16 MR. MC CARTHY: Judge, we have the question of
17 the motion to suppress still outstanding, and I wanted to
18 know, I was prepared to make an objection to the introduction
19 of even that one gun which your Honor had not suppressed.

20 Now, if I start eliciting statements from Mr.
21 Piper concerning one or two guns that he allegedly saw
22 on the bureau before the search warrant was received by
23 the agents, then obviously I am waiving that.

24 So I would like to make that argument now
25 with respect to the one gun.

1 dhb-6
2 THE COURT: Look, you are not on your cross now.
3 As I understand it, the Government is going to bring out
4 certain testimony on direct which the Government says will
5 clear up the situation about these contested items, namely,
6 the second gun and the plastic bags.

7 MR. ENGEL: The Government will --

8 THE COURT: Sowhat I thought we would do would
9 be to hear out the Government's direct and then see if those
10 issues are clarified, and then at least rule on certain
11 aspects of the suppression motion at that time.

12 MR. ENGEL: The Government will not bring out
13 anything about the guns on direct examination and the
14 Government had requested yesterday that we stay away from
15 the guns for the present time in anticipation of the Govern-
16 ment's consent to the suppression of the second gun.

17 THE COURT: Are you ready to take a position on
18 that?

19 MR. ENGEL: Yes. The Government consents not to
20 bring out the guns that were seized, either of them, because
21 one is suppressed already, under any circumstances.

22 THE COURT: So, in other words, the Government
23 will not introduce either the guns themselves or any
24 testimony about guns, is that right?

25 MR. ENGEL: With respect to the seizure in the

1 dhab-7
2 apartment. I don't think there is any other gun in-
3 volved that I can think of.

4 THE COURT: We are talking about the gun
5 seized.

6 MR. ENGEL: No, we will not.

7 THE COURT: In other words, it will only come up,
8 if it does, if there is some defense presentation about
9 it, but the Government in effect consents to the motion to
10 suppress as to the second gun.

11 MR. ENGEL: Right. But as to the plastic bags --

12 THE COURT: You are going to bring out testi-
13 mony?

14 MR. ENGEL: Right.

15 THE COURT: Okay, let's go.

16 MR. ENGEL: May I have one moment with the witness?

17 THE COURT: Yes.

18 MR. FLANNERY: Mr. Rothblatt in his opening
19 referred to the academic record of Mr. Valverde, and what
20 we would like to do is obtain from Mr. Valverde his consent
21 that we could have access to his school records so that if
22 he should take the stand we can talk intelligently with him
23 about it. Otherwise, we will have to litigate a subpoena
24 some time within the next day or so.

25 THE COURT: Where are his academic records,

Ithaca?

MR. FLANNERY: That is correct.

THE COURT: How do you get them down here?

MR. FLANNERY: I have made arrangements.

Everything is arranged except for the consent.

THE COURT: To have them brought down when?

MR. FLANNERY: Tomorrow.

THE COURT: I thought we were going to get through with the trial today.

MR. ROTHBLATT: Bring them down and let's look it over and we can probably work something out.

MR. FLANNERY: It doesn't work that way.

MR. ROTHBLATT: I have no objection to my obtaining them. There might be something that is completely irrelevant to the issues.

THE COURT: Just to have the Government obtain the records from Cornell, does Valverde consent to that subject to rulings on relevance, if they are introduced into evidence?

MR. ROTHBLATT: I have no objection if the records go to the Court, not to the Government. That they come down, be in the hands of the Court. I don't want the Government having their hands on it first before we look at it.

1 dnb-9

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2
3 THE COURT: Then you consent to them being
4 delivered to Government officers in an envelope to be
5 transported to the Court, right?

6 MR. ROTHBLATT: Yes. I don't want it
7 delivered to the Government in advance.

8 MR. ENGEL: As an officer of the Court we will
9 deliver it upon our receipt to the Judge.

10 MR. ROTHBLATT: Yes.

11 THE COURT: In other words, the Government people
12 can be the messenger.

13 MR. ROTHBLATT: So then we will face the question
14 of what is relevant.

15 THE COURT: Thanks a lot.

16 MR. FLANNERY: I will arrange to have it
17 sealed because the subpoena is already issued.

18 THE COURT: All right.

19 MR. ROTHBLATT: Judge, let me make one brief
20 comment about this whole area of cross-examination so that --

21 THE COURT: Go ahead with your witness.

22 MR. ROTHBLATT: Judge, in the matter of exercising
23 discretion, what a Judge faces you get some long-
24 winded lawyers who ask a lot of stupid questions and waste
25 a lot of time on cross-examination. I can assure you,

1 dnb-10

2 speaking for myself and I am sure for Mr. McCarthy, our
3 cross-examination will be concise, to the point. We don't
4 waste questions.

5 THE COURT: I don't worry about that. Cer-
6 tainly you were very good on the first witness. Okay.

7 MR. ENGEL: Judge, before anyone cross-examines
8 on the Dana Smith incident, and this is the fellow who
9 was supposedly on page 33 of Government Exhibit 3303 to
10 have received angel dust or PCP, there are a couple of things
11 that everybody should realize.

12 First, Dana Smith was in court yesterday and appar-
13 ently will be in court again today. I had no idea of this,
14 obviously. But therefore he might be a witness.

15 Secondly --

16 THE COURT: He or a she?

17 MR. ENGEL: It is he, I think.

18 MR. ROTHBLATT: It is a he. I will tell you
19 about him later.

20 THE COURT: I am anxious to get to the jury.

21 MR. ENGEL: Apparently he sat in a jury --

22 MR. ROTHBLATT: In my case.

23 MR. ENGEL: The William Phillips murder trial
24 in State Court where Mr. Rothblatt was the defense attorney.
25

1 dhh-11
2 So I think we are getting into very muddy water
3 there and I think the Government's position would be that
4 before that is cross-examined about we should lay some
5 ground rules about it.

6 THE COURT: Why is it muddy water?

7 MR. ROTHBLATT: Let me tell you about it.

8 THE COURT: Please. I don't know any reason
9 why a person can't testify in a case just because he was
10 on a jury when one of the lawyers was acting as a lawyer.

11 MR. ROTHBLATT: He became a very controversial
12 juror. Let me explain it to your Honor. It will take
13 about two minutes and I will tell you why, so you are not
14 left in confusion.

15 Dana Smith was on a jury in the William Phillips
16 murder case that I tried, and after he was selected as a
17 juror in that case, he applied for a job in the District
18 Attorney's office as an investigator. Right after he was
19 selected as a juror.

20 When the jury came in with a verdict of guilty,
21 the day after they brought in the verdict, he went to the
22 District Attorney's office and he said, "All right, now
23 that I am through with jury duty, how about the job?"

24 This was never disclosed to the Court, never
25 disclosed to defense counsel. There were long post-trial

1 d hearings in which he was cross-examined as a witness.

2 In an opinion by Judge Burns, the prosecutor was
3 severely condemned for his conduct and it is going to become
4 an important appellate issue.

5 That is it, Judge.

6 THE COURT: I didn't focus, frankly, very hard
7 on angel dust. I think that as far as any narcotic
8 activity, it seems to me that what you really are entitled
9 to do is to get the main features of it. But to get into
10 every single thing that this man ever did about sharing
11 marijuana or any, you know -- I assume this fellow was
12 part of the drug culture, and the indications are that he
13 was taking some cocaine back at Columbia, he took cocaine
14 subsequently, and he was selling cocaine, and the issue
15 is who did he get it from?

16 And I suppose we could spend days going into
17 every detail about what he did on either tasting, sampling,
18 selling, procuring, drugs, all of which would be very
19 interesting, but really wouldn't add to the main feature.

20 So there will be a limit as to what you can
21 do. I don't find, frankly, and I didn't even take in
22 all this, what you were saying, too much about the Dana
23 Smith incident.

24 I am sure it is just one of many.

1 dhb-13
2 MR. MC CARTHY: It is one of the few I am
3 going to go into and which I intend to go into. And the
4 only reason I am going into that is we contend he gave it
5 to a friend, and as the result of this, his friend had
6 a severe medical problem and this indicates that he has
7 little concern for his friends and Mr. Glasser was one of
8 his friends, and our argument is that this affects his
9 motive to lie.

10 This is just one of the few --

11 THE COURT: Really. You are really reaching,
12 you know, just reaching and reaching in the defense of this
13 case, and if I were on the jury, that would be laughable
14 to me.

15 Frankly, I just really would think the defense
16 really hadn't gotten much so they have to reach for that.
17 That is my reaction.

18 MR. ROTHBLATT: You may be right tactically,
19 you may be 100 per cent right.

20 THE COURT: That indicates to me what a low
21 probative value it has as far as any benefit to your client.
22 I think it is virtually zero. So I am not inclined to permit
23 it.

24 I am not inclined to rule definitively now
25 because I want to see what else you have, and it seems to

me start with other things besides the sharing of marijuana with Dana Smith or whatever this angel dust is.

When we get to that bridge, we will cross it.

MR. MC CARTHY: I would like the record to reflect that Mr. Engel has brought out on his examination uses, and has brought out use of cocaine by my client. I objected to that and I would submit if this is relevant for my client, it should be relevant on the cross-examination of Mr. Piper.

THE COURT: What we are trying to do inevitably in this case is to get not every last detail about the narcotics activities of anybody, but get cases, even illustrations of the main features of it, and that is all we have to say now.

We will cross that bridge when it comes.

(In open court.)

(Jury present.)

THE COURT: All I can say about our timing this morning, it is 20 minutes later instead of an hour inaccurate. But it certainly wasn't up to our promise and I apologize for that.

All right, Mr. Engel, go ahead.

MR. ENGEL: Thank you, Judge.

dhh-15

Piper-direct

EUGENE STANTON PIPER resumed.

DIRECT EXAMINATION (continued)

BY MR. ENGEL:

Q Mr. Piper, you recall testifying yesterday about your use of the drug cocaine for periods of three to four weeks every three or four months?

A Yes.

Q Prior to 1973, in your conversation with Mr. Glasser, did you use cocaine before that?

A I did.

Q And that was your references to your use at Columbia?

A Yes.

Q During the year 1972, did you use cocaine?

A I didn't.

THE COURT: When were you at Columbia?

THE WITNESS: From January 1970 to January 1971.

THE COURT: And you used cocaine up there?

THE WITNESS: Yes, your Honor.

THE COURT: The last question was whether he used it in '72.

MR. ENGEL: That is correct.

dhb-16

Piper-direct

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THE COURT: What about '71, after you left
Columbia?

THE WITNESS: On one occasion, your Honor.

THE COURT: Go ahead, Mr. Engel.

(continued on next page.)

End 1B

1 slsr Piper - direct

2 Q When you had cocaine for the three and four
3 week period --

4 THE COURT: I'm sorry, did you say you didn't
5 use it in 1972?

6 THE WITNESS: Yes, your Honor, I did not.

7 THE COURT: I am sorry, Mr. Engel.

8 BY MR. ENGEL:

9 Q When you used it, Mr. Piper, during the three
10 and four-week period to which you testified yesterday, how
11 much did you use?

12 A I would say between five and ten times a day.

13 Q Would it depend, whether it was five or ten,
14 on anything in particular?

15 A I gave some to friends of mine.

16 Q And what effect would that have on your own use?

17 A It would increase it.

18 Q As people were around you would use cocaine more
19 frequently?

20 A Yes.

21 Q Now, did there come a time in early 1974 or
22 late 1973, Mr. Piper when you had occasion to go to
23 Des Moines, Iowa?

24 A Yes.

25 Q What was the purpose of your going to Des Moines,

1 2 slsr

Piper - direct

468 a

2 Iowa?

3 A To deliver a pound of cocaine.

4 Q Where did you get that cocaine?

5 A From Mr. Glasser and Mr. Valverde.

6 Q Do you remember where you got it?

7 A I believe in the Mayfair House.

8 BY THE COURT:

9 Q You mentioned before your apartment but you
10 didn't say where it was. Where was your apartment?

11 A 143 East 97th Street, New York.

12 Q Not at the Mayfair House?

13 A No.

14 Q What was the relation of the Mayfair House?

15 A Mr. Valverde and Mr. Glasser had a suite there.

16 THE COURT: Go ahead.

17 BY MR. ENGEL:

18 Q Do you remember what period they had a suite there?

19 A To the best of my recollection it was from
20 December 1973 to, I believe, April of 1974.

21 Q Do you remember what floor it was on, by any
22 chance?

23 A I believe it was the fourth, or a low floor, I
24 am not sure.

25 Q A low floor, perhaps the fourth?

1 3 slar Piper - direct

2 A Yes. I don't remember exactly.

3 Q Now I will direct your attention, if I may,
4 Mr. Piper, to the conversation -- excuse me -- with
5 being supplied with the pound of heroin which you took to
6 Des Moines, Iowa.

7 Did you have a conversation with Mr. Glasser or
8 Mr. Valverde or both of them at the time you received that
9 cocaine?

10 A I did.

11 Q Tell us, please, what you said and what Mr.
12 Glasser and Mr. Valverde said.

13 A I don't remember exactly who said it, but the
14 gist of the conversation was that this was a test to find
15 out if I could perform, and I was asked if I would do this,
16 if I was willing to do this, and I said I was.

17 Q Now, how did you get from New York to Des Moines?

18 A I flew.

19 Q On what air line?

20 A American Air lines.

21 Q Who bought your ticket?

22 A I did.

23 Q Were you told what to do by Mr. Glasser and
24 Mr. Valverde before you left?

25 A Yes.

1

2

Q What were you told and by whom?

3

A I believe I was told by Mr. Glasser that I would meet my connection at the airport, and I did.

5

Q Were you given the name of this person whom you described as your connection?

7

A No.

8

Q Was there some arrangement by which you would know him or he would know you?

10

A I was going to be approached by a black fellow when I got off the airplane.

12

Q And did that occur?

13

A Yes.

14

Q And what, if anything, happened after you got off the airplane and met this gentleman?

16

A We went to a car, his car -- he and another fellow had a car in the parking lot; we went to that car and I gave him the cocaine.

19

Q Did you know their names?

20

A No.

21

Q Do you know their names now?

22

A No.

23

Q Did you go anywhere once you got into the car?

24

A We drove to a Holiday Inn where I got a room and waited for them to come back, which they did about

25

1 5 slsr

Piper - direct

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2 I believe an hour or two.

3 Q And what happened when you came back, if you
4 recall?

5 A They told me that everything was okay with the
6 quality of the cocaine, and they asked me if I wanted to
7 go out to a bar or anything; and I said no, I didn't.

8 Q What happened after that?

9 A I stayed until the morning and returned.

10 Q You returned where?

11 A To New York.

12 Q You flew?

13 A Yes.

14 Q Were you ever paid for the cocaine which you
15 delivered?

16 A I was not paid, no.

17 Q Did you find out whether that cocaine was paid
18 for?

19 A To the best of my recollection I was told that
20 that was being taken care of by -- I don't remember if it
21 was Mr. Glasser or Mr. Valverde, but I was not to be paid.
22 That was part of the arrangement.

23 Q And you were told that by either Mr. Glasser
24 or Mr. Valverde?

25 A Yes.

1 Q And when you came back to New York did you see
2
3 Mr. Glasser or Mr. Valverde?

4 A Yes.

5 Q Where?

6 A I am not sure. I believe it was the Mayfair
7 House.

8 Q And did you have a conversation with him?

9 A Yes, I did. I told him that everything went
10 smoothly, and I was paid for -- I don't remember how much
11 I was paid for delivering the cocaine but it included
12 reimbursement for my ticket.

13 Q Who paid you?

14 A I don't remember.

15 Q Do you remember how much you were paid?

16 A No, I don't.

17 Q Did there come a time, Mr. Piper, when you went
18 to Mr. Valverde's apartment in or about this time?

19 A Yes.

20 Q Where was that?

21 A It was on East 64th Street; I believe it was
22 52 East 64th Street.

23 Q 52 East 64th Street?

24 A I believe so, I am not sure, but I think that is
25 the address.

Q What happened when you went to the apartment?

A The only thing I remember happening was that Mr. Valverde was shaving.

Q Did you discuss or receive any cocaine on that occasion?

A I don't remember right now.

Q Was Mr. Glasser present?

A Yes.

Q Mr. Piper, on how many occasions did you receive cocaine at the Mayfair House from Mr. Glasser and Mr. Valverde?

A I believe three, possibly four. I believe it was three.

Q And were these all between December and April, December 1973 to April 1974?

A Yes.

Q Did there come a time, Mr. Piper, when you were paid money by Mr. Glasser and Mr. Valverde in the Mayfair House?

A Yes.

Q How did that come about?

A One time that I remember specifically I was -- I had undersold a customer, and it was for three ounces, and I had charged him \$3,000, the net result being that I

made no profit on my error.

Q You made no profit?

A Yes.

Q Yes?

A And I told this error to Mr. Valverde and Mr. Glasser, and they gave me the difference, \$600, saying that it could happen, everybody gets one mistake.

Q To whom did you deliver the cocaine you have just described, do you know?

A To three different people -- no, excuse me, it was to one person.

Q Who was that?

A His name was Robbie.

Q Now directing your attention to the same period of time, Mr. Piper, do you recall paying Mr. Valverde money in the Mayfair House?

A Yes.

Q Specifically on any particular occasion?

A I did pay Mr. Valverde on one occasion when he was alone at the Mayfair House, yes.

Q How much did you pay?

A To the best of my recollection it was \$3,000.

Q And what was that payment for?

A It was for cocaine that I had received.

1

Q From whom?

2

A From, I believe, Mr. Valverde and Mr. Glasser.

3

Q Anybody else?

4

A No.

5

Q Now directing your attention to February and

6

March of 1974, Mr. Piper, where were you during those months?

7

A I was in Brazil.

8

Q What were you doing in Brazil?

9

A I was collaborating on a screen play.

10

Q Where were you?

11

A Both in Rio DeJaniero and on an island called

12

Angra 150 kilometers south of Rio DeJaniero.

13

Q Before you went to Brazil did you have an

14

occasion to get some cocaine?

15

A Yes.

16

Q From whom?

17

A Mr. Glasser and Mr. Valverde.

18

Q Where did this occur?

19

A At the Mayfair House, I believe.

20

Q Do you remember how much it was?

21

A I believe it was two or three ounces.

22

Q Could it have been more?

23

A No, I don't believe it could -- it could be

24

1 9 slsr

Piper - direct

476 a 246

2 more -- I don't believe it was because I needed about
3 \$1,200 for my trip.

4 Q And whom did you sell that cocaine to, if you
5 recall?

6 A I don't remember.

7 Q Now directing your attention, Mr. Piper, to
8 August 5, 1974, did you have occasion to meet Mr. Glasser
9 and Mr. Valverde?

10 A Yes, I did.

11 Q Where did you meet them that occasion?

12 A I believe that was at the Regency Hotel.

13 Q And what, if anything, happened when you met
14 them there?

15 A I received cocaine from them and had a discussion
16 with them about the quality.

17 Q How much did you receive?

18 A I believe it was either eight or ten ounces.

19 Q And were both of them present at the time?

20 A Yes, I believe so.

21 Q What were they doing at the Regency Hotel, do
22 you recall?

23 A Could you be more explicit?

24 Q Well, did you meet them in the lobby, or where
25 did you meet?

10 slsr

Piper - direct

477 a 247

A We met in their suite.

Q Were they living there at the time?

A Yes, I believe they were.

Q Now, were you given a price as to what you would purchase this cocaine for?

A I believe because of the quantity that I was to return \$900 per ounce.

Q And did you sell the cocaine that they gave you?

A I did.

Q To whom?

A To Marty Kreiman and Steve Greenstein and Tom Zuck as well.

Q Are you sure you sold it to Tom Zuck?

A I believe I did, I am not sure.

Q Could it have been somebody else?

A I don't think so.

Q How about Robbie? Did you give any to Robbie on this occasion?

A I am not sure. To the best of my recollection I didn't.

Q Did you later have occasion to give any money to Mr. Valverde and Mr. Glasser?

A To the best of my recollection I returned them \$7,200.

2 Q Did there ever come a time, Mr. Piper, when
3 you met Mr. Glasser at Vintage Vendors?

4 A Yes.

5 Q Do you remember when that was?

6 A I believe it was the end of 1974.

7 Q What happened when you met Mr. Glasser at
8 Vintage Vendors?

9 A I picked up some cocaine from him.

10 Q How much?

11 A I believe it was four ounces.

12 Q Was Mr. Valverde there?

13 A No, he wasn't.

14 Q Did you have a discussion about the cocaine
15 that you received from Mr. Glasser?

16 A At that time?

17 Q Yes.

18 A No, I don't believe so.

19 Q Did he sell that cocaine?

20 A Yes.

21 Q To whom, do you remember?

22 A I don't remember.

23 Q Directing your attention to late 1974, Mr.
24 Piper, did you have occasion to receive any cocaine at
25 that time?

1
2 A Yes.

3 Q And from whom?

4 A From Mr. Valverde and Mr. Glasser.

5 Q Where was that?

6 THE COURT: We are talking about what time?

7 MR. ENGEL: Late 1974.

8 A That was at the Regency as well.

9 Q Do you know how much you received?

10 A I believe six, possibly eight ounces.

11 Q What is your best recollection of when in late
12 1974 this occurred?

13 A I believe it was the end of November or very
14 early in December.

15 BY THE COURT:

16 Q What was the quantity you said?

17 A Six, possibly eight ounces, your Honor.

18 THE COURT: All right, go ahead, Mr. Engel.

19 BY MR. ENGEL:

20 Q What did you do after receiving this cocaine?

21 A I brought it to Steve and Marty.

22 Q Were you paid for it?

23 A Not immediately, but I was paid for it.

24 Q How much would you charge for this cocaine?

25 A I believe it was \$1,000 an ounce.

Q Could it have been less?

A It could have been.

Q What could it have been less?

A It was either \$900 or \$1,000.

Q And when was that price set?

A That was always the case on deals that were as large as six or eight ounces, it would be reduced from \$1,000 to \$900.

Q Was it set in the conversation?

A Yes.

Q At the time you received the cocaine?

A Yes.

Q Did you have any discussion about the quality of the cocaine at that time?

A Not that I remember, no.

Q Was there anyone else to whom you sold the cocaine or part of that cocaine in late 1974 aside from Marty Kreiman and Steve?

A Yes, I sold some to Tom Zuck.

Q Do you recall how much?

A I believe two ounces.

Q Did you pay for that cocaine at some later date?

A Yes.

Q How much later after you received it?

1 A Within a couple of days, I believe.

2 Q How much did you pay?

3 A I don't remember the exact amount. I believe
4 it would have been \$1,000 an ounce.
5

6 Q Did you ever have a conversation in a bar with
7 Mr. Glasser?

8 A Yes.

9 Q What if anything did he tell you in the bar?

10 MR. MC CARTHY: May we have a time on this,
11 please?

12 THE COURT: All right.

13 Q When did this occur, Mr. Piper?

14 A Well, I had many conversations with Mr. Glasser,
15 so I am not sure that I could be specific.

16 Q Do you recall the conversation when Mr. Glasser
17 mentioned --

18 MR. MC CARTHY: Objection, your Honor.

19 MR. ENGEL: I have to limit it, your Honor,
20 somehow. There is no way I can delineate the time --

21 THE COURT: I overrule the objection. Do the
22 best you can.

23 Q -- when someone in the Bronx was mentioned?

24 A Well --

25 Q Do you recall such a conversation?

1 A I recall such a conversation. I am not sure
2 that it happened in a bar and I couldn't be specific as
3 to when it happened.
4

5 Q What was it that Mr. Glasser said?

6 A He mentioned that he had another connection
7 in the Bronx and that was all he said.

8 Q Now did you ever have occasion to discuss South
9 America with Mr. Glasser and Mr. Valverde?

10 A Yes.

11 Q What was that discussion?

12 MR. MC CARTHY: Can we pinpoint that time, too,
13 your Honor?

14 Q Would you try to tell us when that conversation
15 occurred as best you can recollect, Mr. Piper?

16 A Well, once again I would have to say that most
17 of the times that we met for dealings there was some talk
18 about South America, so it would be hard to be specific.

19 Q And you don't recall on which of those times
20 the discussions which I have referred occurred?

21 A I remember one discussion in, I believe, late
22 1974 where Mr. Glasser told me that he was glad that Mr.
23 Valverde had been with him in South America. That
24 conversation was in late 1974.

25 Q Did he say where he and Mr. Valverde had been to

1 16 slsr

Piper - direct

483 a 253

2 South America?

3 A In Bolivia.

4 Q Did he say why he and Mr. Valverde were there?

5 A Because there had been some problem with one
6 of the connections, I believe, a chemist, who had tried
7 to pass off bad cocaine on them or lesser quality cocaine
8 on them, and he mentioned Mr. Valverde -- he was glad
9 Mr. Valverde had been there because of his -- something
10 about his having a gun, and that it had come in handy and
11 he was glad that he was there to back him up, in essence.

12 MR. ROTHBLATT: May we have a side bar, your
13 Honor?

14 [At the side bar:]

15 MR. MC CARTHY: Based upon the testimony of Mr.
16 Piper at this time I move for a mistrial, or, in the
17 alternative, that that testimony be stricken.

18 I submit, your Honor, that it is unduly pre-
19 judicial in the context of this case. There is no
20 necessity for it; and, on balance, all it can do is pre-
21 judice the jury. It certainly is not probative on the
22 acts charged here.

23 THE COURT: Motion denied.

24 Both motions are denied.

25 MR. ROTHBLATT: Your Honor, for the record,

since it involves Valverde I join in the motion for a mistrial.

THE COURT: The motion is denied.

[End of side bar discussion.]

BY MR. ENGEL:

Q In this or some other discussion, Mr. Piper, did the State of Florida come into the conversation? Was that ever mentioned?

A Yes.

Q By whom?

A By both parties.

Q Who do you mean by that?

A Mr. Valverde and Mr. Glasser both mentioned Florida on a number of occasions.

Q And what was said by either or both of them?

A Florida was mentioned as the place where it was easier to bring cocaine into than New York.

Q Mr. Piper, I will direct your attention, if I may, now to the end of January or the beginning of February of this year, 1975.

Did you have a conversation with Mr. Glasser?

A Yes.

Q Were you present talking to him or was that on the phone?

1 A I believe it was on the phone.

2 Q What did you say and what did he say?

3 A He told me that some more cocaine was coming in
4 and to tell my connection that this was the case, and
5 I said that I would.

6 Q That is, the people you sold the cocaine to,
7 was that your connection?

8 A Yes.

9 Q Whom did you speak with, that is, your connection?

10 A Marty Kreiman.

11 Q Did you also speak to Steve Greenstein, or do
12 you know?

13 A I believe it was Marty that I talked to initially.

14 Q On the phone?

15 A Yes.

16 Q And what did you say to Marty?

17 A I believe that I called Marty and told him that
18 I wanted to see him, and the conversation we had was at
19 his apartment, and I told him that there was some cocaine
20 coming in and that it would be available, I believe, in
21 the beginning of February.

22 Q When you spoke to Mr. Glasser in the initial
23 conversation you just referred to, did he say where he
24 was or did you know where he was?

1 A I don't remember. I have the --

2 Q Is the answer you don't remember?

3 A The answer is that I do remember a telephone
4 call from Mr. Glasser that I believe was from Florida, but
5 I don't know that he said that specifically.

6 Q Now after your conversation with Mr. Kreiman
7 did you speak again or have a conversation again with
8 Mr. Glasser or Mr. Valverde or with both of them?

9 A Yes.

10 Q When was that, if you recall?

11 A I believe it was the very beginning of February.

12 Q And whom did you speak to?

13 A Mr. Glasser.

14 Q And what did he say and what did you say, if
15 you recall?

16 A He asked me how much they felt -- how much he
17 felt -- excuse me. He asked me how much I felt Marty and
18 Steve could handle, and in my conversation with Steve and
19 Marty we said a half a kilo, maybe a whole kilo.

20 Q Now did there come a time --

21 THE COURT: Could I have the last answer
22 repeated, please.

23 [Last answer read as above recorded.]

BY MR. ENGEL:

Q Directing your attention to February 6, Mr. Piper, of this year, did you see your brother-in-law Sam Glasser?

A Yes, I did.

Q Where did you see him?

A In the hall outside my sister's apartment at 207 East 62nd Street.

Q And you previously agreed to meet him at that time and at that place?

A Yes.

Q And what happened when you got to that address?

A I met him in the hall and he gave me a shopping bag of manila envelopes that I was told contained cocaine.

Q How many envelopes were there, if you recall?

A I believe eight or ten; possibly a dozen.

Q Were you told what the weight was?

A I was told that it had been - - it was unweighed but that it was over a kilo.

Q Were you told what to do with it, if anything?

A I was told to take it to my customer and weigh it and to leave a half a kilo with them or more if they thought they could handle it.

Q What did you do after that conversation?

1 A I took the envelopes to Steve and Marty's
2 apartment where I met with Marty alone.
3

4 Q What happened when you got to Marty's apartment?

5 A We began emptying the envelopes on a glass
6 coffee table and scooping it into piles.

7 Q And where did you weigh it in the apartment,
8 do you recall?

9 A In the kitchen where Marty brought the scale
10 into the scale into the kitchen.

11 Q How much did it weigh?

12 A 1,260 grams, which is a kilo and a quarter,
13 roughly.

14 Q Did you have a conversation after you weighed
15 it with Mr. Kreiman?

16 A Yes. We divided the kilo into two half kilo
17 packages and separated the remaining quarter which I took
18 with me, and he said that he would like to try to -- he
19 felt that he could sell both half kilos.

20 Q What kind of scale --

21 THE COURT: I am not sure of this.

22 BY THE COURT:

23 Q You divided it into two half kilo packages?

24 A Yes.

25 Q And then there was another quarter kilo?

1 A Yes.

2 Q And what happened to that?

3 A I took that with me, your Honor.

4 Q And did you leave the two half kilo packages
5 with Kreiman?

6 A Yes.

7 THE COURT: All right, go ahead, Mr. Engel.

8 BY MR. ENGEL:

9 Q What kind of scale did he have?

10 A He had what was called a triple beam scale,
11 which is precise for small amounts.

12 Q Who, if anyone, did you deliver that quarter
13 kilo package to which you took away?

14 A To Tom Zuck.

15 Q Did you have occasion to make a phone call while
16 you were at the apartment of Steve and Marty?

17 A Yes, I did.

18 Q Whom did you call?

19 A I called Mr. Glasser.

20 Q What, if anything, did you say to him and what
21 did he say to you ?

22 A I told him what the situation was, how much
23 there had been and what I intended to do with it, which
24 was -- I think more specifically I asked him if he thought
25

23 slsr

Piper - direct

it was all right to leave it there, and he said yes.

Q To leave what there?

A The two half kilo packages.

Q Did you tell him anything about the money involved?

A We had worked that out on a previous conversation.

Q What was that conversation?

A That I would get -- that I would return to them \$30,000 for the kilo.

Q Did Steve and Marty have that money -- excuse me, did Marty have that money?

A No.

Q Did you tell Sam that?

A Yes.

Q Now after this incident which you have described, a few days thereafter did you have a conversation with Marty or Steve?

A Yes.

Q What was that conversation?

A I asked him, first of all, if they had rounded up the money that they owed me, and they said that they hadn't --

Q That they had not?

A That they had not.

I asked them if they thought they would be able to sell the second half kilo, and they said they weren't sure.

Q After that conversation did you speak to Mr. Glasser?

A Yes, I did.

Q What did you say and what did he say?

A I said -- I told him what Marty had told me, that there was -- that the money wasn't ready yet, and he told me to go back and -- I believe he said, "See how it feels."

Q Glasser said, "Go over and see how it feels?"

A "Go back and see how it feels," in terms of leaving the second half kilo.

Q Did you go there thereafter?

A I did.

Q On what day?

A On February 10th..

Q On what day of the week was that?

A I believe it was on a Monday.

Q And what happened on that day?

A I took the second half kilo back to my apartment.

Q And what time of day did you do this?

A I got it in the -- I believe it was the

1 25 slsr

Piper - direct

492 a²⁶²

2 afternoon.

3 Q Who was present when you got it?

4 A I believe I got it from Marty.

5 Q Now, after you picked it up did you have a phone
6 conversation with Glasser?

7 A Yes.

8 Q What did you say and what did he say?

9 A I told him that I had the second half kilo at
10 my apartment, and that because of a phone call I had gotten
11 from Marty the night of the 10th, I believe, that I didn't
12 want to keep it there and I felt he should pick it up.

13 Q What was the phone call on the night of the 10th
14 with Mr. Kreiman?

15 A He said that he was calling from a pay phone
16 and that he couldn't explain now but that I should get
17 everything out of my apartment that -- he said everything
18 out of my apartment, and that it was a bummer, and he
19 didn't explain it, but that I should get it out of my
20 apartment.

21 Q Now when did you next see Mr. Glasser?

22 A The morning of the 11th, February 11th.

23 Q Where did you see him?

24 A At my apartment.

25 Q And what happened at that time?

1 A He came to my apartment at about nine in the
2 morning and took the second half kilo with him with, I
3 believe it was, \$2,200 that I had received in partial
4 payment from Tom Zuck.
5

6 Q What was that partial payment for?

7 A The quarter kilo that I had left with him.

8 Q Did you have a conversation with Mr. Glasser
9 when he came?

10 A Yes.

11 Q What did you say and what did he say?

12 A He said that he was going to Florida and that
13 he would be back at the end of the week, and I don't
14 remember what I said.

15 Q Did you have any conversation about the phone
16 call that you received from Mr. Kreiman?

17 A I believe we did but I don't remember the extent
18 of the conversation.

19 Q Had you previously mentioned that to him in any
20 event?

21 A I believe telephonically the night before.

22 Q Was the cocaine which you gave Mr. Glasser in
23 any kind of container?

24 A Yes, it was in a plasticine envelope that was
25 inside a brown legal envelope.

12 slsr

Piper - direct

494 a 299

1 conspiracy and therefore not within the co-conspiracy,
2 an exception to the hearsay rule; and also on the grounds
3 that at this point in time after Mr. Piper's arrest he
4 had become an agent of the Government, and therefore any
5 conversation while they were in custody is in the nature
6 of a violation of United States v. Messiah.
7

8 MR. ENGEL: Your Honor, the statements, of course,
9 are not offered as being within the conspiracy charge.
10 They are offered as false exculpatory and fabricated
11 statements which Glasser and Valverde asked Piper to make
12 on their behalf. Nothing could be more probative.

13 THE COURT: Were both of them together when
14 these statements were made?

15 MR. ENGEL: Yes.

16 THE COURT: Okay, the objection is overruled.

17 MR. ROTHBLATT: Judge, it would seem to me,
18 your Honor -- I don't want to be over-technical, but I
19 think this would be an area where we would certainly be
20 entitled to a hearing where your Honor made findings of
21 fact --

22 THE COURT: I have already heard the circum-
23 stances.

24 I heard testimony about the statement at the
25 suppression hearing, did I not?

MR. ENGEL: Yes, you did.

THE COURT: I am familiar with that.

[End of side bar discussion.]

THE COURT: You are referring to the morning after these arrests, right?

MR. ENGEL: Yes, your Honor, that is right.

THE COURT: All right, proceed, please.

BY MR. ENGEL:

Q Mr. Piper, you were under arrest at that time, were you not?

A Yes.

Q And Mr. Glasser and Mr. Valverde were as well, is that correct?

A Yes.

Q When did this conversation take place?

A In one of the cell blocks in the West Street Prison.

Q Mr. Glasser and Mr. Valverde had been arrested just after you opened the door to the apartment, is that right?

A Yes.

Q Now what was the conversation you had with Mr. Glasser and Mr. Valverde the following morning?

A It was suggested by --

THE COURT: Who suggested? Who said what?

THE WITNESS: If I may explain that, your Honor, Mr. Glasser suggested to me with Mr. Valverde present that I take the brunt of what was happening by constructing a story.

Q What story was that?

A That I had met somebody when I was in Brazil and that he had called out of the blue and said that he had some -- he was in New York and had some cocaine and would I sell it for him.

Q And did you say anything in response to that?

A I said that nobody would believe that.

Q And did Mr. Glasser or Mr. Valverde tell you anything else?

A Mr. Glasser said that if I didn't do it, that they would be in big trouble.

And I said that I would.

Q You said that you would do it?

A I said that I would.

Q But you didn't do that, did you?

A No, not after -- when I first met my lawyer --

MR. ROTHBLATT: Now, your Honor, I object to all of this. He is entitled to conversations and nothing more.

THE COURT: That's right.

Strike the reference to his lawyer.

And the only thing relevant are these conversations.

MR. ENGEL: I understand that.

MR. ROTHBLATT: Your Honor, may we have an instruction at this time that whatever conversations allegedly took place are only binding upon the participants of that conversation and nobody else.

THE COURT: That wouldn't be appropriate.

He has testified that both Mr. Valverde and Mr. Glasser were present, so I don't know what point I would be making by giving any such instruction.

Have you finished?

MR. ENGEL: Just a few more questions. I have three more questions.

BY MR. ENGEL:

Q Mr. Piper, you pleaded guilty to Count 1 of the indictment to which you are charged?

A Yes, I did.

Q Before which judge?

A Judge Griesa.

Q And you are awaiting sentence on that charge?

A I am.

dhb-3

Piper-cross

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Q Afterwards, did you speak to Agent Hall, that is, after the agents entered the apartment? Did you speak to Agent Hall about what you had told Mr. Glasser and Mr. Valverde while you were inside the apartment?

A I don't remember that I told them in the apartment, no.

Q Did Agent Hall ask you whether or not you had tipped them off that there were agents outside?

A I don't remember.

Q Isn't it a fact that you told Agent Hall that you had not tipped them off, that the agents were waiting to come in?

A I don't remember.

Q When the agents were in the apartment at that time, on February 14, after you were arrested and after Mr. Glasser and Mr. Valverde were arrested, did you see any of the agents looking in drawers?

A Yes.

Q Who was that, do you know?

A I don't remember their names, no.

Q Would it refresh your recollection if I said Scotty Gray?

A I believe so, yes.

Q You met Scotty GRAY that day, he was one of

1 the agents that arrested you, right?

2 A Yes.

3 Q Did you see Agent Gray looking through books?

4 A Yes.

5 Q In the master bedroom?

6 A Yes.

7 Q By the way, you said you saw some plastic bags.

8 A Yes.

9 Q Before the agents entered the apartment, is that
10 correct?

11 A Yes.

12 Q Where were those plastic bags, according to
13 your testimony?

14 A Between the bathroom and the bed, about five
15 feet from the bathroom.

16 Q When you were arrested, after your arrest and
17 after your stay in the apartment, you were taken down to the
18 Drug Enforcement Administration headquarters and held over-
19 night at West Street and the next morning you spoke to Mr.
20 Brodsky, your attorney, is that correct?

21 A I did.

22 Q When you initially spoke to Mr. Brodsky, your
23 attorney, did you tell the truth to him?

24 A No.

1
2 Q To whom?

3 A Mr. Guiliani.

4 Q Did there come a time after that when you made
5 another telephone call?

6 A Yes, I did.

7 Q To whom was that?

8 A Mr. Fortuin.

9 Q After you made this call, what, if anything,
10 happened?

11 A I came to the Southern District, this court-
12 house, and with the assistance of Mr. Fortuin, an affidavit
13 was prepared for a search warrant.

14 Q Before you came down to the Southern District,
15 what, if anything, did the other agents do?

16 A The other agents transported Valverde and
17 Glasser and Piper to our regional office and processed them.

18 Q Where was Agent Gray at this time?

19 A He remained in the apartment.

20 Q There came a time when you obtained a search
21 warrant?

22 A Yes.

23 Q After you obtained the search warrant, then
24 what did you do?

25 A I returned to the apartment. I was with Mr.

1 dnb

Hall-direct

501 a 423

2 Fortuin.

3 Q Please keep your voice up. With whom were you?

4 A Mr. Fortuin.

5 Q What, if anything, happened at the time of your
6 arrival at the apartment?

7 A After arriving at the apartment I searched the
8 apartment along with Agent Gray.

9 Q Please describe exactly where you went when you
10 searched.

11 A I went to the master bedroom.

12 Q Where is that located in the apartment that you
13 entered?

14 A As you entered the apartment, it is to the right,
15 and it is as far back as you can go down the hall to the
16 right.

17 Q Where is it in relation to the living-room in the
18 apartment?

19 A The living room is on the left as you enter the
20 apartment.

21 Q What, if anything, happened when you arrived in
22 the bedroom?

23 A I began to search it.

24 Q WERE Agent Gray and Assistant Fortuin also
25 searching?

1
2 A Yes, they were.

3 Q What, if anything, happened?

4 A We found three packages of money contained
5 in envelopes and further contained in books.

6 Q Where were these found?

7 A On the book shelf.

8 Q In the master bedroom?

9 A Yes.

10 Q What, if anything else, was found?

11 A We found a number of large --

12 MR. MC CARTHY: Judge, may we just have a
13 side bar?

14 (At the side bar.)

15 MR. MC CARTHY: Judge, I assume we are going
16 to be going through various of the items that were marked
17 previously as Government exhibits.

18 Consequently I would ask at this time if we can
19 have an opportunity to argue the relevancy of various of
20 these particular items. Understandably some of them
21 are going to come in, I understand that. But there are
22 others. For instance, I would argue that the money, aside
23 from the \$10,000, is inadmissible because there has been
24 no proof.

25 THE COURT: No, the only thing that I have any

question about are the various papers involved in those exhibits, 15 through 35.

Now, most of those were contained in the listing that I read off at the time of the hearing.

MR. FLANNERY: That is correct, your Honor.

THE COURT: I don't think there is any substantial problem. But, as I said, I didn't take time to actually look through each and every piece of paper.

MR. FLANNERY: Perhaps I can allay the fears of counsel by explaining what the testimony of the witness will be. He will testify as to the plastic envelopes and as to the formula and passport in which the formula was found. He won't testify as to guns certainly. He won't testify about any of the papers, any of the other papers. Those all will be introduced through the next witness.

THE COURT: All right. Let's go on that basis.

MR. MC CARTHY: Judge, also, I would ask that the piece of paper containing the alleged formula, not be referred to at this time as a formula.

MR. FLANNERY: It is obviously a formula.

MR. MC CARTHY: I object to that.

THE COURT: You know, that is a matter of common sense.

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Hall-direct

426

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2 MR. FLANNERY: You mean hydrochloric acid and
3 acetone and flasks and beakers, that is not a processing
4 formula for whatever --

5 THE COURT: I don't think that is a problem.
6 I will overrule that objection.

7 (In open court.)

8 Q You testified that three books with money were
9 found. Can you recall who found what books with what
10 money?

11 A Agent Gray found two of the books, I believe.
12 He found -- he located the packages of money which contained
13 ten thousand, and the other two packages of money contained
14 approximately \$3000 each, and I don't recall which one
15 of those packages he located, but I located the other one.

16 So I located one package containing approximately
17 \$3000, Agent Gray located two packages of money containing
18 \$10,000, and approximately \$3000.

19 Q What, if anything else, was found in the course
20 of this search?

21 A A number of plastic -- large plastic bags that
22 were contained in a black suitcase, ledger suitcase.

23 Q Could you describe the condition of these plastic
24 bags that were found?

25 A They were wet on the inside.

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Q W... they right-sided?

A Excuse me?

Q Were they right-sided?

A I don't understand your question.

Q Was there any smell in the room?

A Yes, there was.

Q Would you describe that?

A There was a fairly strong odor, a chemical-type
odor, sort of like ether.

Q Was it an odor you were familiar with?

A Yes, it was.

Q Under what circumstances had you smelled it?

A Under other circumstances where we had -- there
was cocaine --

MR. MC CARTHY: Objection, your Honor.

THE COURT: Overruled.

Q In addition --

THE COURT: Was it answered? Did you finish
your answer?

A Under circumstances where there was cocaine
present I had smelled it before.

MR. MC CARTHY: May we have a side bar, Judge?
I will reserve the motion.

THE COURT: Yes. No side bars necessary.

1 dnb

Hall-direct

506 a 428

2 I want to go back, if I could, and hear the answer.

3 Well, the answer beginning with the large
4 plastic bags.

5 (Answer read.)

6 THE COURT: Go ahead, Mr. Flannery.

7 Q What, if anything else, was found in the course
8 of the search and by whom?

9 A Assistant United States Attorney Fortuin
10 found a handwritten chemical formula contained in Mr. Glasser's
11 passport.

12 Q Where did he locate this?

13 A It was in a briefcase.

14 Q Could you describe more specifically the brief-
15 case that it was found in?

16 A Alligator skin briefcase.

17 MR. FLANNERY: Excuse me, your Honor.

18 Q Let me direct your attention, Mr. Hall, to what
19 has been previously marked Government Exhibit 22 for identi-
20 fication. I ask if you can identify that.

21 A It appears to be the briefcase, yes.

22 Q I direct your attention to what has been marked
23 Government Exhibit 23 for identification and 30A for
24 identification.

25 A Yes, sir.

1
2 Q Can you identify 30A and 23?

3 THE COURT: One at a time. What is 23 for
4 identification? Let's have the witness' testimony.

5 A 23 is the handwritten chemical formula that
6 was found in the apartment.

7 And 30A appears to be the passport that the
8 chemical formula was contained in.

9 THE COURT: Is it 30A or 38?

10 MR. FLANNERY: 30A, I am sorry.

11 Q How can you recognize this attache case?

12 A Agent Gray signed it -- assigned the evidence
13 sticker.

14 MR. FLANNERY: The Government offers at this
15 time, 22, 23 and 30A for identification.

16 THE COURT: Any objection?

17 MR. ROTHBLATT: Your Honor, we have indicated
18 our position and we affirm the same position.

19 THE COURT: You take the same position, all
20 right. I have already ruled. Those exhibits are received.

21 (Government Exhibits 22, 23 and 30A were
22 received in evidence.)

23 THE COURT: I think this can be clear. Any
24 positions taken heretofore on which I have ruled are not
25 weighed now and we don't have to repeat that.

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1 dnb

Hall-direct

508 a 430

2 MR. ROTHBLATT: Exactly.

3 THE COURT: All right. Only new objections
4 will be needed.

5 MR. ROTHBLATT: Very good. Thank you.

6 Q Mr. Hall, in addition to the attache case, the
7 money, the formula, what if anything else, was found? Was
8 there anything found in the closets or anyother part of
9 the room?

10 A Well, there were a lot of papers, a lot of
11 papers and documents and records.

12 Q Were there any other bags discovered?

13 A Yes, there were other suitcases, yes.

14 Q Do you recall how many there were?

15 A Three or four. I don't remember exactly.

16 Q Was there any arrangement made as to who would
17 take custody of the evidence upon discovery of these items
18 in the apartment?

19 A Agent Gray made the seizures.

20 THE COURT: Made what?

21 THE WITNESS: He made the seizures, your Honor.

22 Q Directing your attention back to the second
23 telephone conversation you had Mr. Piper place, to whom did
24 you direct him to speak on the second telephone conversation?

25 THE COURT: He has already described that.

1 MR. FLANNERY: He didn't describe the person,
2
3 though.

4 THE COURT: He said he had him speak to the
5 person other than the one he spoke to on the first conver-
6 sation.

7 MR. FLANNERY: Sorry, your Honor.

8 THE COURT: Anything else?

9 MR. FLANNERY: Your Honor, I would like to just
10 pass this among the jury. I think that might be faster
11 than reading it now.

12 THE COURT: This is what?

13 MR. FLANNERY: Government Exhibit 23 in evidence,
14 the chemical formula.

15 THE COURT: All right (handing).

16 MR. FLANNERY: Your Honor, may we have a short
17 side bar while the jury is looking at the exhibit.

18 THE COURT: Okay.

19 (AT the side bar.)

20 MR. FLANNERY: I just thought this would be
21 a good opportunity to talk about physical arrangements for
22 introducing the exhibits when Agent Gray takes the stand.
23 Perhaps you might even want to discuss some of the things
24 that counsel are concerned about when this witness leaves
25 the stand or even at the side bar while they are still

1 dhh

Hall-direct

510 a 432

2 looking at the formula.

3 THE COURT: What do you mean? Those other papers
4 or what?

5 MR. FLANNERY: Yes. The numbers of papers
6 that are involved in the seizure. Or we can deal with each
7 paper as it is marked for identification and identified
8 by the witness before it is read or referred to in substance,
9 before the jury.

10 THE COURT: If I could have a list -- we could
11 take a recess at any time and just go over all those.
12 But I assume there will be cross-examination of Hall.

13 MR. FLANNERY: Certainly.

14 THE COURT: I don't think really -- at the
15 morning break, why don't we try to go over all the remaining
16 materials?

17 MR. FLANNERY: In fact another witness has just
18 arrived, so I think we would certainly have enough time
19 to goto a recess. I was just concerned about breaking
20 too early.

21 THE COURT: Sure.

22 (In open court.)

23 BY MR. FLANNER:

24 Q Mr. Hall, there seems to be a water stain on
25 the front of this exhibit. I was wondering if you found

1 dnb Hall-direct 511a 433
2 cross
3 it in this condition. Directing your attention to Govern-
4 ment Exhibit 23, the chemical formula.

5 A I believe it was in this condition, yes.

6 Q Thank you.

7 MR. FLANNERY: I have no further questions, your
8 Honor.

9 THE COURT: May I see that? You go ahead
10 with your cross-examination.

11 MR. MC CARTHY: Thank you, Judge.

12 CROSS-EXAMINATION

13 BY MR. MC CARTHY:

14 MR. MC CARTHY: Good morning, ladies and gentlemen.

15 Q Agent Hall, when you first went up to the
16 apartment -- at 5D, is that correct?

17 A Yes.

18 Q And you were listening at the door -- by the way,
19 had you seen Mr. Piper enter that door?

20 A No, I hadn't.

21 Q You saw Mr. Piper exit that door, is that right?

22 A Yes.

23 Q How much time did he spend in the apartment?

24 A In the building?

25 Q In the apartment. In the apartment 5D.

A After entering it?

Q How much time did he spend in the apartment,
if you know?

MR. FLANNERY: Objection, your Honor, confusing.
He is referring to a time when he didn't enter the apartment.

MR. MC CARTHY: I withdraw the question.

THE COURT: You clear it up.

Q How much time did you spend listening at the
door until Mr. Piper exited the apartment?

A About five or ten minutes.

Q Did you hear the entire conversation during that
five or ten minutes or did you hear bits and pieces of
conversations?

A Bits and pieces.

Q By any chance, when Mr. Piper exited the doorway,
did you see the people inside the apartment?

A No.

Q Do you know how many people were inside the
apartment of your own personal knowledge?

A No, I don't.

Q When you were listening at the door, did you
physically have your ear against the door?

A Yes, I did.

Q When you returned subsequently, at approximately
5:30 or so with the other agents, did you listen at the

1 dnb

Hall-cross

2 door again while Mr. Piper was inside the apartment?

3 A Yes.

4 Q How long did you listen at that time?

5 A About 15 minutes.

6 Q Did you hear much conversation then?

7 A No, I didn't.

8 Q Did you hear any conversation then?

9 A Yes.

10 Q Did you hear anything else besides the conversa-
11 tion while you were listening at the door at 5:30?

12 THE COURT: At 5:30?

13 MR. MC CARTHY: That is the second time he was
14 listening at the door.

15 THE COURT: The second time. Okay. Again,
16 what was the question?

17 Q Did you hear anything else besides conversation?
18 Did you hear any running, anything of that sort?

19 A No running. I believe there was a stereo or a
20 television on at that time.

21 Q So that was everything that you heard at the time
22 you were listening at the door at 5:30, is that correct?

23 A A little conversation and a stereo or a tele-
24 vision.

25 Q If you could, when you entered the apartment

dhh

Hall-cross

436

at 5:30 or 5:45 when Mr. Piper opened the door, correct?

A Yes.

Q And Mr. Piper was in the apartment and Mr. Glasser was in the apartment and Mr. Valverde was in the apartment, is that correct?

A Yes.

Q And they were all placed under arrest?

A Yes.

Q And before you entered the premises, you were going to place everybody inside that apartment under arrest, isn't that correct?

A Yes.

Q When you entered the apartment, did there come a time when Mr. Glasser and Mr. Valverde were removed from the apartment, after you entered the apartment, rather?

A Yes.

Q How long was that after you entered the apartment?

A Approximately an hour and a half.

Q During that hour and a half, where was Mr. Glasser located?

A In the living-room and the kitchen.

Q Where was Mr. Piper located?

A In the living-room and the bedroom.

Q How long was he in the bedroom?

1 dhh
2 A Approximately half the time, approximately
3 45 minutes.

4 Q And he was talking with you, is that correct?

5 A Part of the time, yes.

6 Q By the way, did there come a time or there
7 came a time when all three defendants -- withdrawn.

8 When all three occupants, Mr. Glasser, Mr. Valverde
9 and Mr. Piper were removed from the apartment, is that
10 correct?

11 A Yes.

12 Q It was after that time that you came down to
13 the United States Courthouse at Foley Square and you
14 eventually obtained a search warrant, is that correct?

15 A Yes.

16 Q It was after that time that you went back to
17 the apartment 5D and you conducted the search that was
18 referenced to on direct examination, is that correct?

19 A Yes, it is.

20 Q Was Mr. Piper there in 5D while you were conducting
21 your search after you had the search warrant?

22 A No, he wasn't.

23 Q When you were in the apartment from 5:45 for
24 bout an hour and a half onward, did you search any of the
25 drawers, did you look in any of the drawers in the master

1 dnb

Hall-cross

516 a 438

2 bedroom?

3 A No.

4 Q Did you look in any of the books in the master
5 bedroom?

6 A No.

7 Q Did you see AGent Gray look at any of the books
8 in the master bedroom?

9 A No.

10 Q Did you see Agent Gray look in any of the drawers
11 in the master bedroom?

12 A No.

13 Q Did you see any of the other agents at all look
14 in the drawers or the books in the master bedroom?

15 A No.

16 Q How long were you in the back, in the master
17 bedroom during that period of time?

18 A Approximately a half hour.

19 Q Were you there during the time that Mr. Piper
20 was in the master bedroom?

21 A Part of the time, yes, sir.

22 Q So the other part of the time was Agent Gray
23 in the master bedroom with Mr. Piper?

24 A Yes. The agents were in various rooms at
25

various times.

Q My question is, was Agent Gray in the master bedroom with Mr. Piper during part of that time?

A I don't remember.

Q By the way, when you arrested initially Mr. Piper, and I believe you said at 82nd Street, approximately --

A Yes.

Q You apprised him of his constitutional rights, is that correct?

A Yes.

Q Did Mr. Piper say to you that he wanted to speak to a lawyer?

A I don't remember if he said he wanted to speak to one. I think he mentioned -- he may have mentioned that maybe he should speak to a lawyer. I don't remember if he said I want to speak to a lawyer, no, I don't remember.

Q Would it refresh your recollection if I told you that --

MR. FLANNERY: Objection. There is nothing to indicate the witness needs his recollection refreshed.

MR. MC CARTHY: He said he is not sure, Judge.

THE COURT: He doesn't remember.

Q Would it refresh your recollection if I told

1 dhh
2 you that Mr. Piper had said that he had requested a
3 lawyer?

4 A I would say that I don't believe he did request
5 a lawyer, no.

6 Q Before you --

7 THE COURT: I am not sure he said he requested
8 it, either. But the jury can --

9 MR. MC CARTHY: Judge, I havn'g read the
10 transcript.

11 THE COURT: I don't know that it makes a lot
12 of difference, but I think that he said he wanted to see
13 a lawyer. But anyway, we can get that.

14 Thank you.

15 MR. MC CARTHY: Thank you, Judge.

16 Q Now, at 5:30, when you sent Mr. Piper in or
17 you had a discussion with Mr. Piper and he was to go into
18 Apartment D, you developed a scenario for him, in effect,
19 did you not, in other words, you told him to do --

20 MR. FLANNERY: Objection.

21 MR. MC CARTHY: I withdraw the question.

22 Q Did you give him instructions as to what to say
23 to Mr. Glasser or to Mr. Valverde?

24 A Yes.

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Hall-cross

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Q Did there come a time afterwards, that is,
after you went to the apartment, that you asked him
whether or not he had tipped off Mr. Glasser and Mr.
Valverde?

A Yes.

(continued on next page.)

End 1

1 1 dhsr Hall - cross

2 Q What did he say?

3 A He said no.

4 Q Also, with reference to the time that you
5 initially apprehended Mr. Piper, that is, at 5:30 --
6 forgive me for jumping back and forth, Mr. Hall; I have
7 varied notes -- that is, when you apprehended him at 82nd
8 Street and you mentioned before you discussed the trouble
9 he was in; is that correct?

10 A Yes.

11 Q Was Agent Gray with you at the time?

12 A Yes, he was.

13 Q Was there any other agents with you at the time
14 in the car?

15 A No.

16 Q Did either you or Agent Gray tell Mr. Piper
17 how much time he faced for possessing the cocaine?

18 A I don't remember.

19 THE COURT: Keep your voice up now, please.
20 Let us have the question and answer read.

21 [Question and answer read.]

22 Q If you know, was there any discussion at all
23 among the three of you as to how much time was involved
24 in all regarding the possession of cocaine?

25 A I don't recall mentioning anything or hearing

mentioned anything about any time.

Q By the way, did you force Mr. Piper to make the two tape recordings you are talking about?

MR. FLANNERY: Objection, your Honor.

THE COURT: Overruled.

A No, I did not.

MR. MC CARTHY: I just have a few other questions.

Q By the way, where did you find the plastic bags that are in evidence? And I am sorry, I do not remember the number. I believe it was 22A. Where did you find the plastic bags that you referred to on direct examination?

A They were in a black leather suitcase in the bedroom on the floor. I don't remember exactly where on the floor.

Q Right. Well, let me ask you this: Were the plastic bags, that you referred to previously in plastic, in the black leather suitcase or were they physically on the floor?

A They were in the suitcase.

Q By the way, when you entered the apartment, you said the living room is on your left and the bedroom is on your right, or bedrooms are on your right; is that correct?

sljb 1

AFTERNOON SESSION2:30 p.m.

(In the robing room.)

THE COURT: During the lunch hour we tried to see what the situation was as to any objection regarding the testimony of Hall as to what he overheard at the door. I'm talking now about the conversation that he overheard when he first went up to the hall on Piper's first trip, and I am distinguishing that from the occasion just before the arrest, because basically he didn't hear anything before the arrest; but we are talking about the same thing, are we not, Mr. McCarthy?

MR. MCCARTHY: Well, Judge, I'm referring more specifically to that conversation before the arrest, and that was the one that we moved to suppress at the time of the hearing.

In other words, the second conversation - "I am going to see the cat" - I don't believe that was as clearly drawn in the suppression hearing because of the fact that we didn't know that that testimony was going to be coming in.

THE COURT: Well, let's take this: We were talking about whether there was an objection at the trial.

1 sljb 2

2 That testimony was at pages 404, 405 and a little maybe be-
3 yond 406. That is the Government's direct on that point,
4 and I don't know if there is any cross on the point, but
5 there was no objection.

6 MR. MCCARTHY: I don't contend that it is not
7 relevant.

8 THE COURT: No, no. There was no objection at
9 the trial.

10 MR. ROTHBLATT: Your Honor is right. At the
11 trial I don't believe there was.

12 THE COURT: Well, maybe that's a little in-
13 accurate. There was an objection by Mr. Rothblatt about
14 identification of voices, but there was no objection at
15 the trial on that--

16 MR. ROTHBLATT: On that issue.

17 THE COURT: --on any constitutionality.

18 Now, I don't recall if at the suppression hear-
19 ing there was any such objection.

20 MR. FLANNERY: No, there was not, your Honor.

21 THE COURT: The problem at the suppression hear-
22 ing was whether there was a perjured affidavit by Hall in
23 obtaining the warrant.

24 Wasn't it Hall that signed the affidavit?

25 MR. MCCARTHY: That's correct, the question of

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2 whether or not he had the ability to hear at the door.

3 THE COURT: That is right, and there was evi-
4 dence by the expert.

5 So my review of the record may be incomplete,
6 but I don't recall personally any objection on Fourth
7 Amendment constitutional grounds or any other constitutional
8 grounds to the admissibility of this overheard material
9 until just now at the end of the Government's case.

10 Now, please correct me if I am wrong, but I just
11 don't recall it.

12 Now, I think it would be quite inappropriate
13 to go back and try to strike this at this terribly late date,
14 so I think I would hold there was a waiver of that point.

15 Now, I don't think I need to get into the merits
16 of the constitutionality.

17 MR. ROTHBLATT: May I just say for the record
18 that the general objection that we raised at the hearing,
19 at the suppression hearing, with respect to the Government
20 agents' conduct generally in obtaining the search warrant
21 as the basis for what he allegedly heard, in my judgment
22 would be sufficient, and I was under the impression that
23 we did raise it, but you may be right; it's possible that
24 we overlooked it - would be sufficient to encompass any and
25 all Fourth Amendment objections.

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2 THE COURT: Let me just touch on the merits,
3 and I haven't considered this maturely, but my own thinking
4 would be that you had a situation--let's see: Piper was
5 observed going in?

6 MR. ENGEL: With the \$10,000.

7 THE COURT: On this first occasion what did they
8 know about Piper?

9 MR. ENGEL: Piper had been in the 83rd Street
10 apartment with Greenstein.

11 THE COURT: Oh, they had taped that conversa-
12 tion?

13 MR. ENGEL: Right.

14 THE COURT: And they followed Piper back. So
15 they would certainly have probable cause to believe that
16 there was a narcotics conversation going on in that apart-
17 ment.

18 MR. ENGEL: Or whatever apartment they heard,
19 if they could hear voices, because we know he went to the
20 fifth floor.

21 THE COURT: So I would think that there would
22 be a probable cause for listening at that point and there
23 might well have been probable cause for entering and making
24 an arrest, and there was certainly no time to get a warrant,
25 that was out of the question, so I would hold that there was

no violation of the Fourth Amendment.

But the principal thing is I don't think it was raised.

Now, we have got a question on time. What are we going to get into on this evidence about wine-making?

MR. ROTHBLATT: We are going to basically show, your Honor, that Valverde's involvement in the wine business and its relation to the--

THE COURT: Is he going to testify?

MR. ROTHBLATT: My first witness is the president of Vintage Vintners. I prefer to start off with an independent witness. It will save a lot of the scuff that he might go into at the appropriate time. He is a credible witness, and a disinterested witness, and he can testify with more lack of bias about the whole operation, Valverde's operation, and that wouldn't take more than, I would guess conservatively, 45 minutes to an hour.

And then another witness would be a short witness, the young lady who runs Vintage Vintners here in New York who will sort of confirm his testimony.

MR. ENGEL: I'm sorry, Mr. Rothblatt, was it Mr. Otmar and then Miss Morrissey you are referring to?

MR. ROTHBLATT: Correct.

MR. ENGEL: And then in addition to defendants?

1 dnb-2

2 they smelled rankly of ether. What do we know ether to be?
3 That it cleans cocaine at the end of this long process.
4 This is why it smelled at the apartment, the smell of what
5 you will recall Dr. Rice told you was the final wash for
6 the cocaine hydrochloride formula.

7 Agents Hall and Gray told you of an ether like
8 smell whenever he had occasion to smell where cocaine had
9 always been present.

10 What in the world was \$10,000 of prerecorded
11 money doing in the Glory & The Lightning, which went on
12 a familiar course from the agents on down to Valverde?
13 I will trace that in a minute.

14 I would like an explanation, I really would,
15 as to what the \$10,000 of prerecorded funds was doing inside
16 The Flory & The Lightning when the agents searched that
17 apartment pursuant to a search warrant? I would like to
18 hear it. Beyond that, of course, we had another \$3000
19 in the Founding Father. Joseph Kennedy would be pleased.

20 And we had the French dictionary with another
21 \$3000. Again why was this money hidden. Why was it
22 hidden? I think the answer is perfectly clear. It was
23 the proceeds of narcotics transactions along with the
24 \$10,000, and they didn't know which money was marked and
25 so they hid it all.

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2 And I don't think those books came from anywhere
3 except the bookcases in that apartment.
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1 dhh-3

2 Is there any evidence they did? Do we have
3 any evidence that Mr. Piper was a voracious reader?
4 Do we have any evidence that he carried around books in
5 his model portfolio? No evidence at all.

6 There is a stipulation, ladies and gentlemen,
7 another stipulation which says that this money is the
8 money which the agents supplied Greenstein, and the same
9 serial numbers which were recorded at the time it was given
10 to Greenstein were recorded at the time it was seized.
11 This was the money that the agents gave to Greenstein, this
12 was the money that Greenstein gave to Piper, this was the
13 money that Piper gave to Valverde and this was the money,
14 ladies and gentlemen, which these defendants, you may find,
15 hid in those books prior to the arrival of the agents.

16 Now, that is the evidence in this case. There
17 is Piper and all the corroboration which goes with him,
18 there are the tapes, there is the seizure.

19 This evidence, all of this evidence, ladies
20 and gentlemen, establishes beyond any doubt that these
21 defendants were the high rollers of the drug traffic in
22 this city and you can have no doubt about it.

23 Any one of these strands of evidence which
24 I have referred to can convict and should convict these
25 defendants.

1 7 slsr

2 an international scale, and these large dealers on an
3 international scale are carefully --

4 MR. ROTHBLATT: I submit it is improper.

5 MR. ENGEL: I am on my last sentence.

6 THE COURT: Sit down right now. You are not
7 entitled to resum up, I am not going to permit it. It is
8 not rebuttal. You have made some rebuttal points, and
9 you conclude and I will charge right now.

10 MR. ENGEL: I will conclude --

11 THE COURT: Please sit down.

12 - - -

13 MR. FLANNERY: Excuse me, Judge, did we want
14 to have rulings on the charge at all, or have those been
15 taken care of?

16 THE COURT: No, it would not be appropriate
17 now.

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C H A R G E O F T H E C O U R T

THE COURT: Ladies and gentlemen:

You, as the jury, are about to enter on your final functions in the case. You are performing what is really a sacred obligation of citizenship in sitting on this case. As I said at the beginning of the trial, you are obliged to perform your function in an attitude of complete fairness and impartiality, without the slightest bias or prejudice for or against the Government, for or against the defendants.

This case is clearly of great importance to the Government, since the enforcement of the criminal laws of this country is a matter of high concern to the nation and to the community.

At the same time this case is equally important to the defendants because of the obvious consequences of conviction for a crime.

So what you are performing is a very important task to all sides. I am not saying this to say something completely obvious. I am saying this to make sure you understand that you are obliged to work hard and conscientiously at this case, which I know you understand already.

The fact that the United States Government is

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2 a party to this action entitles it to no greater considera-
3 tion than the consideration owed to a defendant.

4 By the same token, the Government is entitled
5 to no less consideration. Indeed, both the Government and
6 the defendants are equals in this court, which is a court
7 of justice to all parties.

8 Your final role is to decide and to pass upon
9 the facts, the issues of fact. You, the jury, are the
10 sole and exclusive judges of the facts. You pass upon the
11 weight to be given to different portions of the evidence.
12 You determine the credibility of the witnesses; you resolve
13 the conflicts in the evidence; you decide what inferences
14 are logically to be drawn from the evidence.

15 My function as the Court is to instruct you on
16 the law, and it is your duty to accept those instructions
17 on the law whether you may agree with them or not. And
18 then it is your duty to apply the rules of law to the
19 evidence and arrive at a verdict at the conclusion of
20 your deliberations.

21 With respect to any matters of fact, it is
22 your recollection of the evidence that governs.

23 Each of the attorneys has given you his
24 summation as to what he contends has or has not been
25 proved in the evidence; but the summations are not in

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2 themselves evidence and are in no way to be substituted
3 for your recollection of the evidence.

4 As I described to you earlier, and I am sure
5 you recognize clearly by now, the evidence consists of
6 the testimony admitted into evidence, the exhibits admitted
7 into evidence and the stipulations of fact which have been
8 agreed upon.

9 The fact that rulings have been made by me
10 during the trial on procedural matters or on evidence matters
11 or on other matters of law; the fact that occasionally
12 questions have been asked by me; the fact that I have
13 occasionally and, indeed, in the last few minutes or
14 hours commented to the attorneys on shortening their
15 summations and various other things, I want it clearly
16 understood, as I am sure you understand already, that under
17 no circumstances are these things to be taken by you in
18 any way to indicate any view of mine as to what your
19 verdict should be.

20 My rulings and comments at the trial are
21 completely extraneous, really, to the business that you
22 have at hand, which is to determine the facts. This is
23 your job, and I have no intention of treading upon it
24 whatever.

25 Now you will have a copy of the indictment in

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2 the jury room during your deliberations.

3 As you undoubtedly realize by now, the indict-
4 ment names as defendants not only Mr. Glasser and Mr.
5 Valverde, but it also names Eugene Piper, Steven Greenstein
6 and certain other persons.

7 The point I make to you now is that you must
8 bear in mind clearly that it is only Glasser and Valverde
9 who are on trial before you. You are to draw no inferences
10 whatever against defendants Glasser and Valverde from the
11 fact that certain other persons have pleaded guilty to
12 charges against them in the indictment.

13 The question of guilt or innocence is an
14 individual matter. In order to convict Glasser on any
15 count, or in order to convict Valverde on any count, you
16 must find that the Government has proved the elements of
17 its case against that defendant beyond a reasonable doubt.
18 And, indeed, you must consider -- and I think this is
19 really what I have just said, but I want to emphasize that
20 in considering the two defendants here, you must consider
21 them individually as to any count. You must ask yourselves:
22 Has the Government proved the elements of that count against
23 Glasser? And then you ask yourselves: Has the Government
24 prove the elements of that count against Valverde?

25 I told you at the beginning of the trial

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2 and I will repeat again now, the indictment is merely an
3 accusation. It is a charge. It is no evidence or proof
4 of guilt. No weight whatever is to be given by you to
5 the mere fact that an indictment has been returned against
6 the defendants. It is the evidence in the trial that
7 matters, and the evidence alone.

8 Both defendants have pleaded not guilty, which
9 means that the Government has the burden of proving the
10 charges against each defendant beyond a reasonable doubt.
11 A defendant does not have to prove his innocence. A de-
12 fendant does not have to introduce evidence. He is presumed
13 to be innocent of the accusations contained in the indict-
14 ment. This presumption of innocence was in his favor at
15 the start of the trial; it is in his favor as I instruct
16 you now, and it remains in his favor during your delibera-
17 tions in the jury room. It is removed only if and when
18 you are satisfied that the Government has sustained its
19 burden of proving the guilt of the defendant beyond a
20 reasonable doubt.

21 What do we mean by a reasonable doubt? A
22 reasonable doubt is a doubt founded in reason arising out
23 of the evidence or lack of evidence. It is a doubt which
24 a reasonable person has after carefully weighing all the
25 evidence. It is a doubt which appeals to your judgment,

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2 your common sense, your experience, but all of this is
3 in contrast to some things which it is not. It is not
4 caprice, whim, speculation, mere suspicion. That is not
5 a reasonable doubt. It is not sympathy or a desire to
6 avoid an unpleasant duty, mere personal feeling, that kind
7 of thing. The key word is reasonable.

8 After a fair and impartial consideration of
9 all the evidence you say that you are not satisfied as
10 to the guilt of a defendant, if you have a doubt which
11 would cause you as prudent persons to hesitate before
12 acting in matters of importance to yourselves, then you
13 have a reasonable doubt, and in that circumstance it is
14 your duty to acquit, to return a verdict of not guilty.

15 On the other hand, if after a consideration of
16 all the evidence you candidly and honestly say you do have
17 an abiding conviction of a defendant's guilt, such a con-
18 viction as you would be willing to act upon in important
19 matters in your own lives, then you can say that you have
20 no reasonable doubt and under those circumstances it is
21 your duty to convict.

22 One final word on this subject: Proof beyond
23 a reasonable doubt does not mean proof to a positive cer-
24 tainty or beyond all possible doubt. If that were to be
25 the rule, few persons however guilty would ever be convicted.

1
2 It is practically impossible for any of us to be absolutely
3 and completely convinced of any controverted fact unless
4 possibly in the realm of mathematics or something like that.
5 So the law in a criminal case is that it is sufficient if
6 the guilt of a defendant is established beyond a reasonable
7 doubt but not beyond every possible doubt.

8 The indictment charges the defendants with
9 violation of the Federal narcotics laws.

10 Let me describe for you the statutory provisions
11 with which we are concerned. These provisions are con-
12 tained in what is known as the Comprehensive Drug Abuse
13 Prevention Act of 1970 passed by the Congress. The Congress
14 enacted this statute as part of its concern with the illegal
15 importation and distribution of narcotic drugs.

16 Title 21, United States Code, Section 841 makes
17 it unlawful for a person to knowingly or intentionally
18 distribute or possess with intent to distribute what is
19 called a controlled substance.

20 Title 21, United States Code, Section 812 has
21 a list of controlled substances in two schedules, Schedules
22 I and II. Cocaine is a controlled substance included in
23 Schedule II.

24 I am going through this because when you read
25 the indictment in the jury room you will see reference to

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2 Schedule 11 Narcotic Drug Controlled Substances, and you
3 can simply translate that for the sake of this case into
4 cocaine.

5 So if you put the two statutory provisions
6 together, Sections 841 and 812, the total effect is to make
7 it illegal to distribute or possess with intent to distri-
8 bute knowingly and intentionally, cocaine.

9 Section 846 in that same group of provisions
10 makes it a separate crime for two or more persons to con-
11 spire to violate any other provision of the statute.

12 From the point of view of the law there is a
13 special danger when two or more people conspire and combine
14 to violate the law, a greater danger than when a single
15 person acts alone. So in this instance and in other
16 instances Congress has made it a separate crime to conspire.

17 Now the indictment contains actually eight
18 counts, and as I mentioned, the indictment names and certain
19 counts name other defendants besides Glasser and Valverde,
20 and I have already instructed you on how you are to view
21 that situation.

22 Mr. Glasser and Mr. Valverde are named in
23 Count 1, which is the conspiracy count, the allegation
24 of conspiracy. They are also named in Count 2, Count 3
25 and Count 7.

Now, Count 1, as I said, is the conspiracy allegation. The other counts namely, Counts 2, 3 and 7 are what we call substantive counts.

Let me briefly describe the distinction between conspiracy and substantive counts:

A substantive count charges the doing of an illegal act. A conspiracy charge alleges a conspiracy to do such an illegal act. And as I will describe further in a moment, the essence of the crime of conspiracy to do such an illegal act is the agreement, the agreement to do an illegal act.

Now I am going to read for you the counts in the indictment which name the defendants Glasser and Valverde.

Count 1 is somewhat long, and I am not indicating in any way that you should sit here and try to commit this to memory as I read it. You will have the indictment in the jury room; but I think for purposes of introduction you should hear the exact language and I will explain certain things about that language.

"Count 1.

"The Grand Jury charges that (1) that from on or about the first day of January, 1973, and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York,

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2 Samuel Glasser, Joseph F. Valverde, Eugene Piper, Martin
3 Kreiman and Steven Greenstein and Tom Zuck, the defendants
4 and others to the Grand Jury known and unknown, unlawfully,
5 intentionally and knowingly combined, conspired, confederated
6 and agreed together and with each other to violate Sections
7 312, 841(a)(1) and 841(b)(1)(a) of Title 21, United States
8 Code.

9 "2. It was part of said conspiracy that the
10 said defendants unlawfully, intentionally and knowingly
11 would distribute and possess with intent to distribute
12 Schedule II narcotic drug controlled substances, the
13 exact amount thereof being to the Grand Jury unknown,
14 in violation of..." and then it names these same statutory
15 provisions.

16 "3. Among the means whereby the defendants
17 and co-conspirators carried out the objectives of this
18 conspiracy for the following:

19 "[a]. The defendant Samuel Glasser, Joseph
20 F. Valverde and others imported and caused to be imported
21 into the United States from various South American
22 countries and elsewhere, including Bolivia and Argentina,
23 large quantities of cocaine.

24 "[b]. The defendants Samuel Glasser and
25 Joseph F. Valverde distributed and caused to be distri-

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2 buted the imported cocaine to others including the defendant
3 Eugene Piper for redistribution to, among others, the
4 defendants Martin Kreiman, Steven Greenstein and Tom Zuck.

5 "[c]. The defendant Eugene Piper would in
6 return for the cocaine distributed to the defendants
7 Martin Kreiman, Steven Greenstein, Tom Zuck and others,
8 receive approximately \$1,200 per ounce cocaine, and, in
9 turn, pay to the defendants Samuel Glasser and Joseph F.
10 Valverde approximately \$1,000 per ounce of cocaine.

11 "Overt Acts:

12 "In pursuance of the said conspiracy and to
13 effect the objects thereof the following overt acts were
14 committed in the Southern District of New York:

15 "1. -- there are 20 of these listed, and as
16 I will tell you in a moment, the Government is only re-
17 quired to prove that one of the alleged conspirators com-
18 mitted one of the overt acts; but, again, by way of in-
19 troduction I will read the whole list of alleged overt acts --

20 "1. In or about the summer of 1973 the
21 defendant Samuel Glasser gave approximately one ounce of
22 cocaine to the defendant Eugene Piper in New York, N. Y.

23 "2. In or about the summer of 1973 the de-
24 fendant Samuel Glasser gave to the defendant Eugene Piper
25 approximately two ounces of cocaine in New York, N. Y.

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2 "3. In or about the winter of 1973, the de-
3 fendants Samuel Glasser and Joseph F. Valverde gave ap-
4 proximately three ounces of cocaine to the defendant
5 Eugene Piper in New York, New York.

6 "4. In or about the winter of 1973 the defendant
7 Eugene Piper gave to the defendants Martin Kreiman and
8 Steven Greenstein approximately three ounces of cocaine in
9 New York, New York.

10 "5. In or about the summer of 1974, the de-
11 fendants Samuel Glasser and Joseph Valverde gave to the
12 defendant Eugene Piper approximately three ounces of cocaine
13 in New York, New York.

14 "6. In or about the summer of 1974, the de-
15 fendant Eugene Piper gave to the defendant Martin Kreiman
16 and Steven Greenstein approximately three ounces of cocaine
17 in New York, New York.

18 "7. In or about November or December 1974 the
19 defendants Samuel Glasser and Joseph Valverde gave
20 approximately ten ounces of cocaine to the defendant
21 Eugene Piper in New York, New York."

22 I really don't think it is too useful to read
23 all this to you. You get the idea. This is the type of
24 thing making up the allegations of the overt acts, and
25 you will, of course, have the list in the jury room.

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2 Now, I will defer reading the substantive counts
3 until I have instructed you on the conspiracy count, and
4 my instructions to you on the conspiracy count are as
5 follows:

6 In order to convict a defendant on Count 1,
7 the conspiracy count, you must find that the Government
8 has proved beyond a reasonable doubt each of the following
9 elements:

10 First, that for some period of time between
11 January 1, 1973 and July 28, 1975 -- that was the date of
12 the filing of the indictment -- there was a conspiracy
13 among two or more persons to distribute cocaine.

14 Second. That the defendant whom you are
15 considering was a member of this conspiracy.

16 Third. That one of the conspirators committed
17 at least one of the overt acts charged in the indictment.

18 The first element refers to the need for the
19 Government to prove beyond a reasonable doubt the existence
20 of a conspiracy to distribute cocaine.

21 A conspiracy means an agreement or common plan
22 to violate the law. As I said earlier, the essence of a
23 conspiracy is agreement. However, it is not necessary in
24 order to prove conspiracy for the Government to prove by
25 direct evidence the actual creation of a contract or

1 agreement. It is often difficult or impossible in a criminal
2 conspiracy case to have any direct evidence that one con-
3 spirator stated, "I agree to such and such" and the
4 other conspirator states, "I agreed to such and such."
5 Usually in a conspiracy case proof of a conspiracy consists
6 of evidence about acts, transactions, movements, and so
7 forth.
8

9 The jury must determine, usually from such
10 circumstantial evidence, whether it is sufficient to prove
11 that there was an agreement or common plan to carry out
12 criminal activity.

13 In connection with the second element I
14 described above, you must consider separately as to de-
15 fendant Glasser and as to defendant Valverde whether the
16 Government has proved beyond a reasonable doubt that he was
17 a member of the conspiracy, if you find that a conspiracy
18 existed.

19 This means that you must find, in order to
20 convict, that the defendant you are considering participated
21 in the conspiracy with knowledge of its unlawful purpose
22 and in furtherance of its unlawful objectives.

23 Now these are somewhat brief definitions in
24 a sense, but I think they are all that needs to be said
25 to you about the definition of these crimes and the

elements to be proved. The question before you is whether on the evidence the Government has proved that there was a conspiracy to distribute cocaine and whether Glasser and whether Valverde worked in this conspiracy together and with others to sell cocaine knowingly and intentionally.

In this connection you will consider the testimony of Piper who states that on certain occasions he purchased cocaine from Glasser and Valverde, commencing in 1973.

You will consider the various tape recordings of telephone conversations and the one face to face conversation, which are in evidence, as to what they show.

You will consider the testimony of Agents Hall and Gray as to the items found in the apartment 5D on 63rd Street.

You will consider the exhibits themselves, and you will determine what significance these exhibits have. By making these statements about the evidence you are to consider, I am not, of course, attempting to indicate what this evidence does or does not prove as to the defendants Glasser or Valverde.

You are to determine the credibility of the witnesses, and you are to determine what significance items such as tapes and physical evidence have. I am just trying

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2 to indicate in the barest summary form that on these
3 elements which I have defined somewhat briefly, you are
4 under the obligation to consider all the evidence and to
5 determine whether all of that evidence proves the Govern-
6 ment's case or whether it does not.

7 And, of course, you are to consider the evidence
8 and the contentions of the defendants on the questions of
9 credibility and on the other matters which they have argued.

10 You are to consider the evidence introduced on
11 the defense regarding the wine business and the participa-
12 tion, the alleged participation, as contended for by the
13 defendant Valverde in connection with Vintage Vendors and
14 the evidence regarding Glasser acting as an attorney for
15 Vintage Vendors, and in other respects.

16 Again, I am attempting to indicate to you here
17 that you are to weigh all the evidence, scrutinize the
18 witnesses as to their credibility, and weigh all the evi-
19 dence on both sides and determine whether the Government
20 has made its case, proved the elements beyond a reasonable
21 doubt.

22 Now, I have referred to the concept of circum-
23 stantial evidence, and I use circumstantial evidence as a
24 term in contrast to direct evidence.

25 Now let me try to define both of these terms.

1
2 If a party is trying to prove in court that
3 a certain event occurred, direct evidence of that event
4 would be a witness testifying that he saw or observed that
5 event occurring.

6 Circumstantial evidence, on the other hand, is
7 where one fact, or perhaps, a chain of facts gives rise
8 to a reasonable inference of another fact. If one fact
9 or a group of facts on the basis of common experience
10 leads you logically and reasonably to infer other facts,
11 then this is circumstantial evidence. Circumstantial
12 evidence is no less valid and no less weighty than direct
13 evidence, provided that the inferences drawn are logical
14 and reasonable.

15 Let me illustrate with an example that has
16 to do with matters entirely out of court what circumstantial
17 evidence might involve.

18 Suppose Mrs. Smith's husband is in Europe on
19 business. She finds on her husband's desk a bill for \$150
20 from Macy's for a new suit. The bill was due on July 10th,
21 and it is now July 25th. Did her husband just forget to pay
22 the bill or did he intentionally fail to pay the bill
23 because something was wrong with the suit?

24 Let us suppose that Mrs. Smith finds the bill
25 unopened at the bottom of a pile of papers. Suppose also

1 that her husband had started wearing the suit and it was
2 fine. Mrs. Smith could reasonably infer from these cir-
3 cumstances that her husband had lost sight of the bill
4 and simply had forgotten to pay it.
5

6 But let us suppose that the bill was found
7 open lying on top of the desk. Let us suppose that Mrs.
8 Smith knows that her husband was working at his desk just
9 before leaving for Europe and was paying some bills. Let
10 us further suppose that Mrs. Smith goes to the closet and
11 finds the suit with one pants leg nine inches shorter than
12 the other. In this case Mrs. Smith can reasonably infer
13 from these somewhat different circumstances that her
14 husband intentionally failed to pay the bill because the
15 suit was defective.

16 She can do this despite the fact that she has
17 no direct evidence. Her husband has not told her or written
18 her about what he intended to do.

19 Now there was some comment during the summations
20 about what you should do if you have a body of circumstan-
21 tial evidence, and the inferences would be equally con-
22 sistent with guilt or innocence.

23 Well, I think the best way to explain that
24 to you is this: I don't think you are under an obligation
25 to take every little bit of circumstantial evidence and

weigh whether it coincides with guilt or innocence. That isn't the way you reason out the case, because you are instructed to take all of the evidence, the circumstantial evidence and the direct evidence. But obviously, since the Government has the burden of proving its case beyond a reasonable doubt, if after weighing all of the evidence you find that the evidence is equally consistent with innocence and guilt, you, of course, pick the innocent explanation.

Or if at some point it is important for you to determine, if there is a block of circumstantial evidence that stands independently, and you want to determine what it means independently, if it is equally consistent with some innocent explanation or some guilty explanation, yes, at that point, if it stands independently take the innocent explanation because the Government has the burden of proof.

Now I want to instruct you on the substantive counts:

Count 2 charges as follows:

"The Grand Jury further charges, in or about July or August, 1974, in the Southern District of New York, Samuel Glasser, Joseph F. Valverde and Eugene Piper, the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II

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2 narcotic drug controlled substance, to wit, approximately
3 three ounces of cocaine."

4 Let me say at this point -- and this goes for
5 the conspiracy count and the substantive counts -- it is
6 not necessary for the Government to prove that the conspiracy
7 extended throughout the entire length of the period alleged.
8 It is not necessary for the Government to prove that events
9 occurred on the exact days they are alleged, as long as you
10 find that the conspiracy existed at some time during the
11 period alleged, and that the events, occurred on or about
12 such days.

13 Now, Count 3 is essentially the same in wording
14 as Count 2 but it refers to November or December, 1974,
15 and it refers to ten ounces of cocaine.

16 Count 7 is essentially the same in wording
17 except it refers to February 6, 1975, and refers to 1,260
18 grams of cocaine.

19 Now before you can find a defendant guilty of the
20 crime charged in any of Counts 2, 3 or 7, you must find that
21 the Government has proved beyond a reasonable doubt the
22 following elements:

23 First: That on or about the dates specified
24 the defendant you are considering distributed or possessed
25 with intent to distribute cocaine in the approximate amounts

referred to.

Second: That he did so unlawfully, wilfully and knowingly.

Now, you will see at the end of the substantive counts a reference to a statute referred to as Title 21, United States Code, Section 2. That's a different section than those 800 sections I referred to earlier. This is the aiding and abetting statute.

This reads as follows, at least the relevant part reads as follows:

"Whoever aids, abets, counsels, commands or induces or procures the commission of a crime is punishable as a principal."

In other words, a person who aids and abets another, a person who knowingly assists another in the commission of a crime is just as liable criminally as that other person.

Consequently if you find that the actual physical distribution or possession of cocaine occurred as alleged in the substantive counts or any of them, and that the actual physical acts were performed by one defendant, but you find that another defendant was participating with him and was assisting him and knowing of the criminal activity of that first defendant, then the second defendant

would be guilty as an aider or abettor even though he did not physically handle or physically distribute the drug.

But, again, aiding and abetting must be proven beyond a reasonable doubt in order to convict.

You have heard the playing of certain tape recordings of recorded telephone conversations. You heard the tape recording played of a conversation in which Steven Greenstein wore a body recorder during a conversation between himself and Piper.

As I said earlier, it is up to you to determine the significance and the weight to be given to these various conversations, but what I want to instruct you on now is this, that as matter of law none of these conversations were improper or violated the legal rights of any defendant or participant.

You have heard evidence that certain persons acted as informants for the Government; certain persons cooperated with the Government, and during their cooperation they acted in an undercover capacity. That refers to, of course, Piper and Greenstein, who acted briefly in that capacity; you have heard evidence that certain other people who were involved with purchases from Greenstein and Kreiman acted as undercover agents or informants.

I want to charge you with respect to that that

1
2 in the investigation of criminal activities, the authorities
3 are sometimes compelled to use stealth and the devices which
4 we have heard referred to, and I am simply instructing you
5 again that these were proper law enforcement methods and
6 you are to so consider them in this case.

7 There has been testimony that after their arrest,
8 after the arrest of Glasser and Valverde, the defendant
9 Glasser in Valverde's presence asked Piper to fabricate
10 an explanation for the cocaine transactions.

11 There is a stipulation, I believe, that at some
12 point subsequent to the arrest Valverde told Assistant
13 United States Attorney Guiliani that he was national sales
14 manager of Vintage Vendors and was paid a salary of \$36,000
15 per year.

16 Now, it is up to you to determine whether those
17 incidents occurred or didn't occur, and I am not suggesting
18 that they did or did not. That is up to you to determine.
19 The stipulation, of course, establishes the stipulated fact,
20 but the point I am instructing you on now is that it is up
21 to you to determine whether the statement to Mr. Guiliani
22 by Valverde about his employment by Vintage Vendors was or
23 was not false. That is the point. The statement was made,
24 but it is still a question for you as the jury to determine
25 whether it is false.

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2 Now, as a matter of law, if you find that
3 Glasser and Valverde were attempting to get Piper to
4 fabricate a false story about the cocaine transaction,
5 you can consider this as evidence of consciousness of guilt
6 existing at that time and, in turn, as circumstantial
7 evidence of guilt.

8 If you believe that Valverde was telling a false
9 story to Guiliani about his connection with Vintage Vendors
10 and the salary paid from that, again you can consider that
11 as circumstantial evidence of consciousness of guilt, and,
12 in turn, of guilt. I am not saying you further should not
13 consider this evidence. It is up to you. I am just stating
14 to you the issue which you are to consider.

15 Now as I told you at the beginning of the trial,
16 you have the responsibility and it's one of your most
17 crucial responsibilities in this case, to evaluate the
18 credibility of the witnesses. As I told you then, you do
19 it in court basically the same way you do it in your everyday
20 lives, although, of course, you don't have an experience
21 exactly like this one in your everyday lives, but the
22 analogy has some meaning. In other words, you use your
23 common sense.

24 How do you judge credibility? Let's review
25 that very briefly: In the first place, you observe the

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2 witnesses on the stand; you consider your basic impression
3 whether you believe they are telling you the truth or
4 otherwise; and in connection with this impression you should
5 keep in mind that witnesses are human beings from a variety
6 variety, walks of lives and backgrounds. The ultimate
7 question is not whether you have a personal like or dislike
8 or a personal respect or disrespect for the witness as a man
9 or a woman. The final question as to each witness is
10 whether in view of all the circumstances you believe that
11 the witness has told you facts you can rely on and which
12 contribute to your knowledge of the factual picture of
13 the case.

14 It is up to you to determine whether you will
15 accept all of a witness' testimony, none of it, or whether
16 you will accept part and reject part.

17 Now beyond the demeanor and appearance of a witness,
18 you will obviously consider how the witness' testimony
19 jibes or coincides with other evidence, to what extent is
20 it corroborated or not corroborated? You will consider the
21 inherent probability or improbability of that testimony.
22 You will consider whether the witness has made statements
23 which are inconsistent in this sense. Has he said one
24 thing at one time in this court; another thing at another
25 time in this court; has he said one thing in this court and

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2 given a different version on some prior occasion outside
3 of court?

4 Now if you find that there are inconsistencies
5 in that way, again, as in all your consideration of the case
6 and in all your consideration of the issue of credibility,
7 you must keep this in balance. A witness is not automatically
8 unt: stworthy because he says something inconsistent here
9 with what he said on another occasion or even utters in-
10 consistencies in court. The question is, how much im-
11 portance do you attach to the inconsistencies? Do they
12 go to the heart of his testimony? Do they cause you to
13 disbelieve the important parts of his testimony? That
14 is for you to weigh and determine now in a balanced fashion.
15 How accurate or inaccurate do you believe the witness'
16 testimony is with respect to certain details? If you
17 believe that the witness' memory has been somewhat in-
18 accurate or vague in certain respects, is this the kind of
19 thing to cause you to disbelieve the essentials of his
20 testimony, or is it the kind of thing which is not that
21 important and simply is matters of lesser detail which
22 permits you to still accept the essential, important parts
23 of his testimony.

24 You should also consider whether the witness
25 has any kind of bias or prejudice or interest in the

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2 outcome of the case which would give him or her a motive
3 to falsely testify.

4 The Government has called as witnesses, as
5 you know, Eugene Piper and Steven Greenstein. These are
6 defendants named in the case. They were accomplices in
7 the very crimes charged in the indictment.

8 I instruct you that in the prosecution of crime
9 the Government is frequently called upon to use witnesses
10 who are accomplices or witnesses with prior criminal ac-
11 tivities and records. Often the Government has no choice,
12 and the Government must rely on witnesses to transactions
13 such as they are. The Government, obviously, in many cases
14 could not successfully prosecute crimes if it could not
15 rely on the testimony of such persons.

16 However, I instruct you that the testimony of
17 an accomplice witness should be received with caution and
18 weighed with care by the jury.

19 Again, there is nothing automatically or in-
20 herently untrustworthy about the testimony of an accomplice,
21 but it is for you to weigh that testimony carefully and
22 scrutinize it carefully and with caution before accepting
23 it.

24 Let me say further that the Government is not
25 required as a matter of law to corroborate the testimony of

1
2 accomplice witnesses. However, the Government contends that
3 the testimony of these accomplice witnesses is substantially
4 corroborated.

5 The fact that certain witnesses are law enforce-
6 ment agents of the United States Government does not entitle
7 their testimony to any greater weight or consideration than
8 that accorded to any other witnesses in the case. Their
9 credibility is to be determined and judged by you just the
10 same and on the same basis as the credibility of the other
11 witnesses.

12 Neither of the defendants in this case testified,
13 and in refraining from testifying they were exercising their
14 absolute constitutional rights. They had a right in this
15 case to refrain from testifying; they had a constitutional
16 right, and the important thing for you to understand now
17 is that under no circumstances are you to draw any inference
18 whatever against them or against either of them for their
19 refraining from testifying.

20 In other words, when you tally up, so to speak,
21 the evidence in favor of the Government and see how strong
22 it is or how weak, you are not to include in that tallying
23 that consideration, any inference drawn from the failure
24 of the defendants to testify.

25 You heard a witness who testified here as an

expert, Dr. Rice. In matters involving expert opinion or scientific opinion it is proper to call a witness such as Dr. Rice but, again, Dr. Rice does not supplant the jury in its role. The jury is entitled, and, indeed, obliged to make its own determination of the facts and to evaluate any opinion evidence given to it.

Now, in conclusion, if you fail to find beyond a reasonable doubt that the law has been violated, or if you fail to find beyond a reasonable doubt that the defendant or defendants, or either of them, has committed the offenses charged in this indictment, then you should not hesitate for any reason to find a verdict of acquittal as to such unproved charge.

But, on the other hand, if you should find that the law has been violated, as charged, as to a defendant, you should, of course, not hesitate because of sympathy or any other reason to render a verdict of guilty.

Upon your oath as jurors you cannot allow consideration of the punishment which may be inflicted upon a defendant if convicted to influence your verdict in any way or in any sense to enter into your deliberations. The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendants

solely upon the basis of such evidence and the law.

When you proceed to your deliberations, please have in mind that each of you is entitled to your own sincere good judgment. At the same time, it is expected that you will exchange views with your fellow jurors. This, obviously, is the essential purpose of jury deliberation, to discuss and consider the evidence together and listen to the arguments of your fellow jurors. This means, of course, that you will present your own point of view as well as listening to and considering other points of view.

Any verdict must be the unanimous verdict of each one of you. While the objective is to reach a verdict, if you can, and while you must be unanimous to render a verdict, each individual juror must cast his vote in good conscience based upon his own ultimate judgment after considering all points of view and testing his own beliefs against those of his colleagues.

Now, if you find during your deliberations that you need to hear testimony reread, or if you need to have any portion of this charge reread, or if you have a question you want clarification on, then you can indicate such questions or requests in a note sent to me by your foreman.

There will be marshals outside the jury room, and any requests or notes or messages to the Court can be

conveyed by these marshals. Just have your foreman put the matters in a note.

Now, on the matter of requesting a rereading of any materials in the trial, this certainly can be done if it's necessary, but I ask you to do this: Before you request such a rereading, trade your recollections. Sometimes one person will not remember something but others will, and you must remember that if you request a rereading of material, that inevitably delays your deliberations. So before you make any such request trade your recollections.

You will have the indictment in the jury room.

As far as the exhibits, what we generally do and what we will do in this case is as follows: If you need any exhibits, you request them, and we will respond to those requests.

Juror No. 1 will be your foreman, but if he declines to serve you will elect another of your members as foreman.

Again, any verdict you render must be unanimous; it must be the unanimous verdict of each one of you.

When you are ready with a verdict, have your foreman send me a note stating that you are ready, but please do not put the verdict in the note. The verdict will be announced by the foreman in open court after we have

reconvened.

Now, if you would hold your places for just another minute, I will talk to the lawyers and see if there is anything that needs to be altered about the charge.

[In the robing room:]

THE COURT: I will start with the Government.

MR. FLANNERY: First I would like to give you a copy of the indictment. Although it has holes punched into it, it can be given as a copy of the indictment to the jury.

THE COURT: All right.

MR. FLANNERY: With respect to the charge, there are only two items I would like to draw your attention to.

One is your charge that if two interpretations were applicable to an item in evidence, the jury could take the innocent one.

That charge has been expressly rejected by the Second Circuit, and I would ask that your Honor correct that.

THE COURT: It is still around, and I was a little uncertain about it.

MR. FLANNERY: I could, if you require it, make a call to my office. I don't recall the name of the case offhand, but I am certain that that case stated that

2 that --

3 THE COURT: I tell you, what I basically did,
4 and I think the logic behind it was, they are not to take
5 each bit of evidence and worry about whether there is an
6 innocent or otherwise reading; but I think what I basically
7 told the jury is to add all the evidence up, and if they
8 find that the whole thing is equally consistent with guilt
9 or with innocence, they could take the innocent meaning.

10 MR. FLANNERY: I think that would be reasonable
11 doubt. But the impression I got from the way you instructed
12 the jury was that if there was an equivocal piece of
13 evidence standing by itself, for example, the partnership
14 agreement, and you had to decide whether or not that was
15 innocent in and of itself or guilt in and of itself, and
16 you couldn't by yourself make a determination, you should,
17 since the Government has the burden -- I believe those
18 were your words -- then they should decide that it was
19 innocent, and that is not my understanding of what the
20 Second Circuit was saying when it rejected the general
21 instruction about if two inferences can be drawn from a
22 piece of evidence, guilt or innocence, they reject the
23 notion that you had to infer innocence from the piece of
24 evidence, and I think perhaps you could correct the impres-
25 sion --

1 THE COURT: Who is au courant on the law on
2
3 that point?

4 MR. ROTHBLATT: I say your Honor's instruction
5 was exactly the law.

6 THE COURT: What is the law now? Do you disagree
7 with Mr. Flannery?

8 MR. ROTHBLATT: Absolutely, your Honor.

9 MR. ENGEL: Your Honor, my recollection is
10 precisely Mr. Flannery's, but I don't know the name of the
11 case.

12 I think your statement just now when you came in
13 and said you were a little bit concerned about that, when you
14 said, "What I was trying to get at was the individual piece
15 of evidence, the inference with respect to that as opposed
16 to the bulk" -- of you could just repeat that --

17 THE COURT: The problem is that it was brought
18 up in the summations, and I don't think it should have
19 been brought up in the summations because that's a matter
20 of law, and whoever was doing it was flying blind; and I
21 don't know whether it was Mr. Rothblatt or Mr. McCarthy,
22 and I just didn't think I could leave that untouched.
23 But I don't have the case, and I know some judges still
24 probably do that.

25 MR. MC CARTHY: Judge, I thought your Honor's

charge was clear on that.

MR. ROTHBLATT: I think your Honor's charge was clear and correct and we will object to any change.

MR. FLANNERY: If I could just make one phone call for the name of the case --

THE COURT: Yes, you make your phone call.

MR. ENGEL: Would you consider just two little things, that in addition to aiding and abetting the Government would request a charge on constructive possession.

Did I forget to put that in my requests?

THE COURT: You didn't, but I think that is so complicated --

MR. ENGEL: Okay.

THE COURT: I think it's really more harm than good.

MR. ENGEL: The other thing was that in the same fashion that the Government is not required to prove the exact date of the charge; it is not required to prove the exact amount --

THE COURT: I think I said that.

MR. ENGEL: Did you?

THE COURT: Yes.

MR. ENGEL: I don't recall.

MR. MC CARTHY: Frankly, Judge, I don't recall.

I don't recall one way or the other.

THE COURT: I can certainly clarify that, but I think I said it.

MR. ENGEL: I don't recall it, Judge.

THE COURT: Okay, now let me have the defense requests.

MR. ROTHBLATT: Your Honor, the defendant Valverde would request on the issue of reasonable doubt just that portion of my request, Request No. 2. I can read it very briefly, your Honor.

THE COURT: Yes, you read it.

MR. ROTHBLATT: Will you instruct the jury that each juror must decide for himself whether or not there is a reasonable doubt on the evidence and give the benefit of the doubt to the defendant.

THE COURT: No, I will not. I don't think that adds anything.

MR. ROTHBLATT: Now, your Honor, with respect to credibility of witnesses, we would request that your Honor instruct the jury in this language:

In considering the testimony of a witness or witnesses you are entitled to take into consideration his admission of conviction of crimes committed by him as affecting his credibility as a witness.

1
2 THE COURT: I implicitly stated that.

3 MR. ROTHBLATT: Your Honor discussed accomplice
4 but you didn't discuss the admission of commission of crimes
5 dealing --

6 THE COURT: Am I required to give that express
7 instruction?

8 MR. ENGEL: I don't believe so, your Honor.

9 THE COURT: I gave a pretty strong instruction
10 about accomplice witnesses.

11 MR. ROTHBLATT: That is independent, your Honor,
12 of accomplice.

13 Now, your Honor, I will come to accomplice --

14 THE COURT: If I am required to give it I want
15 to give it, but I don't know of any requirement that I have
16 to single out -- frankly, I think from any sensible stand-
17 point the issue about his conviction here, and the only
18 conviction that is in the record, the issue about his con-
19 viction is whether he is testifying falsely in order to buy
20 favors, and that was gone into to a fare-thee-well in the
21 summations, and I told the jury, I specifically said that
22 they were to consider whether he has got an interest in the
23 outcome of the case, and I told them on the accomplice tes-
24 timony to scrutinize it carefully, and I believe it would
25 not add a thing in any sense, so I won't give that.

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2 Now what about the accomplice testimony?

3 MR. ROTHBLATT: I think your Honor is missing
4 my point --

5 THE COURT: I am not missing it.

6 MR. ROTHBLATT: It deals with the credibility of
7 a person connected of a crime independent of his being an
8 accomplice.

9 THE COURT: But that doesn't make any sense
10 here.

11 Okay.

12 MR. ROTHBLATT: Your Honor, we would except
13 to that portion of your charge dealing with accomplice tes-
14 timony in that it fails to set forth what we have set forth
15 in our requests.

16 THE COURT: What's the difference?

17 MR. ROTHBLATT: Let me give it to your Honor.

18 THE COURT: All right.

19 MR. ROTHBLATT: An accomplice -- I am reading
20 from my requests -- an accomplice when he gives evidence
21 against persons who he claims committed the crime of con-
22 spiracy as charged in this indictment may be impelled to do
23 so by motives which are inclined to pervert the truth.

24 In other words, he may have a reason --

25 THE COURT: Let me just say briefly that I

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2 think I have given a strong charge on accomplice, and I think
3 it complies with the law, and I will not add to that.

4 MR. ROTHBLATT: Okay. I just want to note my
5 exception.

6 THE COURT: Yes, you have your exception.

7 Now Mr. McCarthy?

8 MR. MC CARTHY: Judge, I just have one --
9 obviously, I join in Mr. Rothblatt's request, and I won't
10 go over it again.

11 THE COURT: Yes, you have your exception.

12 MR. MC CARTHY: The only other one is I request
13 No. 2 which said on the offenses charged -- in other words,
14 as evidence of Mr. Glasser's use of cocaine at various times
15 during the course and outside the course of the conspiracy --

16 THE COURT: I don't think that's necessary.

17 Now, let's go back to the Government.

18 What's the story?

19 MR. FLANNERY: With respect to the charge we
20 were discussing before that if there is a double inference
21 between innocence and guilt you should choose innocence, the
22 Supreme Court in United States v. Holland said that such an
23 instruction should be rejected, and the reason was that they
24 didn't want to encourage jurors to look at the evidence
25 in isolation, but they wanted them to look at the evidence

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2 in totality, and such a charge teaches them to look at the
3 trees and not the forest.

4 THE COURT: I think that has a lot of merit.

5 MR. MC CARTHY: But that's what you said.

6 THE COURT: But I went on and I equivocated. I
7 went on and I said if you find that there is a particular
8 piece of evidence which you view independently which you
9 believe should be viewed independently, then you should
10 accept the innocent.

11 Now what the Supreme Court apparently is saying,
12 you really look -- you don't just isolate circumstantial
13 evidence, and this is a case where you have got a very
14 substantial body of direct evidence, and the jury would not
15 logically be involved in isolating out bits of evidence.

16 So I think I will clarify that.

17 MR. ROTHBLATT: May we note our exception.

18 I don't construe Holland to say what the
19 Government says. I construe it consistent with the way
20 your Honor has already instructed the jury.

21 THE COURT: I don't have the case, and I am not
22 going to take the time to read it now. It's the Govern-
23 ment's risk.

24 Do you want to have that instruction changed?

25 MR. FLANNERY: Yes.

There is only one other thing: I think you covered most of the elements of conspiracy, but I am not clear on whether or not you said they were liable for the acts and statements of co-conspirators once the agreement had been established. I don't think that instruction was given to the jury.

THE COURT: I could never understand what that adds. That is a lot of verbiage that might apply to a given case.

MR. ENGEL: Had the Martindale been played here it would have been useful, but I agree --

THE COURT: For some reason I missed the full treatment on overt acts.

MR. ENGEL: You said you were going to go into it.

Just to clarify one further thing. Would you say again, as you did once before, that the transcripts themselves are an aid to understand the evidence and not the transcripts themselves?

THE COURT: What if they want the transcripts, don't they get them?

MR. ENGEL: No, I think the better practice would be to come back and hear the tapes.

MR. FLANNERY: Unless it is stipulated to on

the record.

[End of robing room discussion.]

[In the courtroom in the presence of the jury:]

THE COURT: I have got a couple of points to cover, and it will just take a moment.

You will recall this point came up in the summations, and I touched on it in my charge, and that is the question of whether if you have a piece or a body of circumstantial evidence, and you can draw an inference of an innocent meaning or an inference of a guilty meaning, and the inferences are equally possible, there was some question whether as a matter of law you should draw the innocent meaning.

Now, I think my instruction on that was a little confusing.

The point is, you are not really involved in determining guilt or innocence on the basis of any isolated piece of evidence. Here there is much direct evidence, and, of course, as you heard repeatedly, it is up to you to determine the credibility of that direct evidence.

There is also circumstantial evidence, the question of what inferences you draw from physical evidence, and so forth, and what that means. And the whole point of

1
2 your deliberation is to take all of the evidence, evaluate
3 it, and see what you regard as credible, and then, after
4 you evaluate all the evidence, you determine whether the
5 Government has sustained its burden of proving guilt beyond
6 a reasonable doubt. You are really not involved in taking
7 one piece of evidence and determining whether that is guilt
8 or innocence. So I think I will just leave it this way.
9 I will withdraw that kind of instruction, because I don't
10 think it really makes any sense here.

11 Basically you weigh the evidence, you weigh the
12 circumstantial evidence; see what logical inferences are to
13 be drawn from the circumstantial evidence, and when you get
14 all the evidence weighed, you consider all the elements in
15 the counts that you are dealing with, and you determine
16 whether the Government sustained its burden. That is your
17 job.

18 I also neglected to, I think, fully explain to
19 you what is involved in overt acts.

20 The point about an overt act is this: The
21 Government, under our laws, and when it is attempting to
22 prove a conspiracy, the crime of conspiracy, must also
23 prove the commission of at least one overt act, one objective
24 act, by one of the conspirators in order to convict for the
25 crime of conspiracy.

1
2 Why is that? Because of this. The essence of
3 the crime of conspiracy is the agreement, but it is possible
4 for two people to make an agreement, and then before any-
5 thing is done decide against it, and in that case the law
6 doesn't convict them for the crime of conspiracy.

7 So the law is that before there is a crime of
8 conspiracy there has to be the agreement and the members in
9 that agreement and some objective act, taken pursuant and
10 in furtherance of that conspiratorial agreement. The overt
11 act does not have to in and of itself be a crime; just an
12 objective act.

13 Now in connection with the tape recordings, I
14 will remind you that the recordings themselves are the real
15 evidence. The transcripts were given to you as aids, and
16 if you find need to review those transcripts in your de-
17 liberations, we would undoubtedly prefer that the tapes be
18 played and the question of whether you need the transcripts
19 we will cover when the time comes.

20 Now that concludes my instructions.

21 I will dismiss the alternates with our thanks.
22 Although we have only had five and a half days of trial
23 so far, the trial has spanned a period of time beginning
24 Thursday, December 4th, and if at any time up till now one
25 of the regular jurors had become indisposed, the whole

1 52 slsr

2 trial would have collapsed if we had not had the assurance
3 of the presence of the alternates. But right now the de-
4 liberations can only be conducted by twelve jurors, and
5 we don't need the alternates, and the alternates are dis-
6 missed with our thanks.

7 [Alternates excused.]

8 THE COURT: Will you swear the marshals.

9 [Marshals sworn and the jury retired to the
10 jury room at 2:15 p.m.]

11 - - -

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(Note from jury; 3:35 P.M.)

(In open court; jury absent.)

THE COURT: Note from the jury received at
3:35 P.M.

"May we have the following evidence. (1),
both passports; (2)" -- how do you read 2? It is
a little hard for me to read.

MR. ROTHBLATT: Let me read it, Judge. Maybe
I can help you.

"Articles of agreement." I think they mean
the partnership.

THE COURT: "Articles of agreement. (3) Chemical
process description formula; (4), invoices from Florida
Chemical supplier."

Now, why don't you put on the record what you
have agreed to send in.

MR. ENGEL: Your Honor, we have agreed in
pursuance of that note to send Government Exhibit 25A,
30B, 23, 27, 24 and 57, and the only question at all it
seems to me raised by the note is whether by the passports
they mean all of the passports in evidence or simply
the two passports which were produced at summation, and
I think if they need the rest of the passports for whatever
reason they can ask for it.

1
2 THE COURT: Do you all agree to send the
3 exhibits in which Mr. Engel has mentioned?

4 MR. ROTHBLATT: Yes, your Honor.

5 MR. MC CARTHY: That is correct, your Honor.

6 THE COURT: We will send those in.

7 We will take a little break now.

8 (Recess.)

9 (In the robing room.)

10 (4:33 P.M. - note from jury.)

11 THE COURT: It says "We need to hear the testi-
12 mony regarding Count 2," and the lawyers are now involved
13 with the transcript trying to get that marked.

14 What have you agreed to read?

15 MR. ENGEL: With respect to Piper's testimony,
16 we have agreed to read page 246, lines 7 to line 25, page
17 247, line 2 to line 25; page 326, line 9 to line 25;
18 page 327, line 2 to line 16; page 328, line 16 to line 25;
19 and page 329, line 2 to line 12.

20 THE COURT: Is that all?

21 MR. ENGEL: That's all.

22 MR. FLANNERY: Then with respect to the witness
23 Greenstein, on his direct examination from page 83,
24 line 14 to page 91, line 8.

25 THE COURT: Line 14 of 83, to 91?

1 dnb

2 MR. FLANNERY: Line 8. Then on cross-
3 examination at page 138, line 22 to line 25.

4 THE COURT: Line 22 to 25.

5 MR. FLANNERY: That is correct. Also on cross-
6 examination at page 140, line 16 to line 19.

7 That is all for Mr.Greenstein.

8 THE COURT: Okay. Is that agreeable to the
9 defense?

10 MR.ROTHBLATT: Yes. May I suggest in addi-
11 tion to the reading of the testimony, I would ask that
12 your Honor instruct the jury that by agreement of counsel
13 you are having read to them those portions of the testimony
14 that deal with the count, but they should bear in mind
15 that there are areas of cross-examination that deal with
16 credibility and they should bear that in mind which doesn't
17 deal specifically with the time involved in the count of
18 the indictment. In other words, they may think that this
19 is the only evidence that is relevant to those counts.
20 Obviously credibility is relevant and cross-examination
21 dealing with credibility in general is relevant.

22 THE COURT: I hate to start instructing them
23 on that. I won't do that. Who should read it? Do you
24 want me to read it?

25 MR. ROTHBLATT: Certainly.

(In open court.)

(5:30 P.M. jury present.)

THE COURT: We received a note at 4:33 as follows: "We need to hear the testimony regarding Count 2. Now, I am sorry, ladies and gentlemen, it took us a little time to get this organized and then I had another hearing, so we are a little delayed in getting to you."

But these are the excerpts from the record that relate specifically to what is alleged in Count 2. Obviously if there is something that relates more incorrectly that we haven't read, you can ask for a further reading.

Now, this testimony is from Eugene Piper, his direct examination by the Government.

(Record read as indicated in robing room.)

THE COURT: That was from 246 and 247 of the record.

Now from page 326, and this is the cross-examination of Mr. Piper by Mr. McCarthy.

(Record read.)

THE COURT: That is all of the testimony of Piper on that subject.

Then certain testimony of Greenstein. This is the direct examination by the Government attorney.

(Record read.)

1 dhh
2 THE COURT: 138. This is the cross-examination
3 of Mr.Greenstein by Mr. McCarthy.

4 (Record read.)

5 THE COURT: Further cross of Mr.Greenstein
6 by Mr. McCarthy.

7 (Record read.)

8 THE COURT: That was page 140.

9 That concludes the reading that I think is
10 responsive to your question. You can now resume your
11 deliberations.

12 I would like to ask you this: we are basically
13 interested in suiting your convenience as far as these
14 deliberations, but we need to plan ahead a little bit.
15 Obviously you can work late this evening if you wish to
16 or you can go home at a certain point and get a good
17 night's rest and resume tomorrow morning. If you are
18 going to work late enough so that you need to have dinner,
19 then the court officers need to make arrangements for you
20 to go out and eat. I don't think we can have a meal
21 brought in to you.

22 Obviously if you go out and come back, that
23 is a substantial expenditure of time. So you think about
24 all those things and I haven't talked this over with the
25 lawyers, but I think that we would all, I am sure, really

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2 basically leave it up to you.

3 Would you be able to, after you reconvene,
4 send me back word as to whether you wish to work a sub-
5 stantial amount of time further tonight, which would in-
6 volve going out to a meal and interrupting your delibera-
7 tions, or if you would prefer to suspend, you know, at a
8 reasonably short period of time from now and go home for
9 the night and come back tomorrow morning. Can you caucus
10 and let me know about that?

11 (Recess.)

12 (5:50 P.M. - note from jury.)

13 (In the robing room.)

14 THE COURT: Two notes, both received at 5:50
15 P.M. The first marked Court Exhibit C. "In response
16 to your question, we wish to proceed and omit dinner."
17

18 Then another note: "We have appointed a new
19 foreman. Do you wish to change chairs or what other
20 procedures do we follow?"

21 I think it doesn't make a lot of difference.

22 MR. ROTHBLATT: It doesn't make a lot of
23 difference. Tell him to announce his verdict.

24 THE COURT: So let's just --

25 MR. ENGEL: When they come in, you can ask

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2 them.

3 MR. ROTHBLATT: Frankly I would just as well
4 have Tom here advise them to take your message that a new
5 foreman can announce the verdict.

6 THE COURT: And he can keep his seat. Just send
7 it in orally.

8 Now, we have some notes about personal --
9 asking that calls and so forth -- and I think that ought
10 to be marked as one batch as a Court exhibit, and handed
11 to the lawyers for their perusal. So you know what has
12 come out. I have seen those and they are just please
13 call so and so.

14 MR. ROTHBLATT: I am not interested in that.
15 I am not interested in that.

16 THE COURT: We will wait for them. Thanks a
17 lot.

18 (Recess.)

19 (6:30 P.M. - note from jury.)

20 (In the robing room.)

21 THE COURT: Note received at 6:30 marked Court
22 Exhibit E. "We have received a unanimous verdict on
23 three of four counts. We are undecided on the remaining
24 count and wish to continue deliberations."

25 MR. ROTHBLATT: I have no objection.

1 MR. MC CARTHY: Yes, Judge.

2 MR. ENGEL: Why don't we take the partial
3 verdict, Judge?

4 MR. ROTHBLATT: I will take it, too. Either
5 way, Judge.

6 THE COURT: What do the lawyers want? What do
7 you say, Mr. McCarthy?

8 MR. MC CARTHY: I guess we might as well
9 take the verdict now, Judge.

10 THE COURT: Do you all agree to take the verdict?

11 MR. ENGEL: Depending on what it is. There may
12 be responses to one side or the other. I think there
13 might be a way, depending on what the verdict is, to shorten
14 the situation or whatever.

15 We don't know.

16 THE COURT: I have no objection to taking the
17 partial verdict. I take the jury seriously that they
18 have reached a verdict, and if the lawyers wish to --

19 MR. ROTHBLATT: I would just as well take it,
20 certainly. We might as well save our time and the Court's
21 time.

22 THE COURT: Mr. McCarthy?

23 MR. MC CARTHY: It is all right with me.

24 THE COURT: Is it all right with the Government?
25

1 dhh
2 MR. ENGEL: Yes.

3 THE COURT: I think I will send a note back,
4 then, so that they are prepared to render it.

5 I will send this in if it meets with your
6 approval to the jury:

7 "In response to your note of 6:30 P.M., would
8 you please come into court and render the verdict on the
9 three counts you have agreed on. Then we can decide on
10 how to proceed further."

11 Is that acceptable?

12 MR. MC CARTHY: Yes, Judge.

13 MR. ENGEL: Yes, Judge.

14 (In open court.)

15 (Court Exhibits A through E marked.)

16 (Jury present.)

17 THE COURT: I have your note, and before the
18 clerk proceeds, I will just read this: "We have reached
19 a unanimous verdict on three of four counts. We are un-
20 decided on the remaining count and which to continue
21 deliberations tomorrow," and then I sent you a note asking
22 for your verdict on the three counts you have agreed on.

23 Okay, Mr. Zengara.

24 THE CLERK: May we first know who the new foreman
25 is? Juror Number 7.

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THE COURT: Your name, sir?

JUROR NO. 7: Mr. Hoffman.

THE CLERK: All right, Mr. Hoffman, would
you please stand?

What counts have you agreed upon?

THE FOREMAN: We have found a unanimous verdict
on Counts 1, 3 and 7.

THE CLERK: 1, 3 and 7.

THE FOREMAN: Yes.

THE CLERK: All right. Ladies and gentlemen
of the jury, Mr. Foreman, how do you find the defendant
Samuel Glasser on Count 1?

THE FOREMAN: Guilty.

THE CLERK: On Count 3?

THE FOREMAN: Guilty.

THE CLERK: On Count 7?

THE FOREMAN: Guilty.

THE CLERK: How do you find Joseph F. Valverde
on Count 1?

THE FOREMAN: Guilty.

THE CLERK: On Count 3?

THE FOREMAN: Guilty.

THE CLERK: On Count 7?

THE FOREMAN: Guilty.

1 dnhb
2 THE COURT: Does any party wish the jury
3 polled on those counts?

4 MR. ROTHELATT: Yes, your Honor.

5 THE COURT: Let's have the jury polled. You
6 may sit down, Mr. Hoffman.

7 THE CLERK: Ladies and gentlemen of the jury,
8 listen to your verdict as it stands recorded. You say
9 you have found the defendant Glasser guilty on Counts 1,
10 3 and 7, and the defendant Joseph Valverde guilty on Counts
11 1, 3 and 7.

12 Is that your verdict?

13 (All jurors answered in the affirmative.)

14 THE CLERK: So say you all.

15 THE COURT: Ladies and gentlemen, if it is
16 acceptable to the lawyers, I would like to have the jury
17 retire and then we will advise you very shortly about
18 further proceedings. Would you please go back in the jury
19 room.

20 MR. ENGEL: Judge, we might be able to do it
21 at the side bar.

22 THE COURT: All right. Ladies and gentlemen, just
23 keep your seats.

24 (At the side bar.)

25 MR. ENGEL: Your Honor, in view of the verdict,

1
2 I just wanted to save time and the Government would
3 have no objection to releasing the jury at this time and
4 we would file a nolle prosequi on Count 2.

5 The Government has every reason to believe
6 that the verdict on one of the other three counts will
7 survive any test if confronted. We can do that and dismiss
8 the jury at this time.

9 THE COURT: In other words, you have a conspiracy
10 count and two substantive counts.

11 MR. ENGEL: Right.

12 THE COURT: Do you have any objection? The
13 jury has worked on that Count 2 and they probably worked
14 on it a good long time, and they are perfectly willing to
15 come back and I think I better make some kind of explanation
16 to them. Do you have any objection to that?

17 MR. ENGEL: No, I don't, Judge. I think we are
18 all agreed that the jury has worked hard and that that
19 should be reflected on this record.

20 THE COURT: All right. Is there any objection?

21 MR. ROTHBLATT: No, your Honor.

22 MR. MC CARTHY: No.

23 THE COURT: All right.

24 (In open court.)

25 THE COURT: Ladies and gentlemen, the Government

1
2 is willing, in view of the verdict on the three counts,
3 in order to save your time and effort, to take or file
4 what is called a nolle pros.-- I don't know what the Latin
5 word is.

6 MR. ENGEL: Prosequi on Count 2.

7 THE COURT: I feel I owe you some explanation
8 on that. You obviously worked on Count 2, as you did
9 on all the other counts, and you have had the testimony
10 read, but from a realistic standpoint, when it comes
11 to sentencing, no one would expect the actual sentence to
12 be piled on top of each other to the extent of having four
13 separate sentences, and the Government realizes that and I
14 realize that, so I believe that that is a sensible resolu-
15 tion.

16 I know you are perfectly willing to come back
17 and finish your job, and I appreciate that very much, and
18 the Government appreciates it and the defense counsel
19 appreciate it. But no one has objection to this proceeding
20 and I hope you will not object, because the verdict covers
21 obviously three-fourths of these counts, and I want to
22 thank you. You have been very patient, you have been
23 obviously very hard working, and you have been patient with
24 our keeping you waiting and the interruptions and you have
25 worked hard and you have worked efficiently this afternoon,

1 dhh

2 and we extend our most sincere gratitude for your efforts.

3 You are now released and you can go home. You
4 are at liberty, if you wish now, to discuss the case, of
5 course, among yourselves and with your friends and family.
6 At the same time, you are at liberty not to discuss the
7 case, and it is entirely up to you. I think for the
8 sake of good order I am going to have you -- the marshal
9 will escort you out of the building and we will all keep
10 our places in the courtroom so that you will leave promptly.

11 Thank you again very much.

12 JUROR NO. 4: We have to check downstairs?

13 THE COURT: Mr. Zengara will tell you about the
14 details.

15 All right.

16 (Jury discharged.)

17 THE COURT: While Mr. Zengara is with the jury,
18 let's work out our sentence date. Incidentally, I am
19 going to ask you to get the nolle to me promptly. I have
20 waited, you can't believe how long I have waited and
21 had cases on my books waiting for a nolle.

22 MR. ENGEL: I understand that, Judge.

23 THE COURT: I want that nolle. If it isn't
24 here by eight o'clock tonight, I want it by eight o'clock
25 tomorrow night or some time pretty soon, because it just fouls

Request No. 8 - Credibility

The credibility of a witness is solely for you, the jury, to decide. Subject the testimony to the same scrutiny that you would subject any important conversation or act. The mere fact that a witness was called by the Government or is a Government agent does not entitle such a witness' testimony to more weight or credence than that of any other witness.

In determining the credibility of witnesses, the jury should also consider the manner of their testifying, whether they were frank and open or whether they were evasive and should take into consideration the witness' character and any admitted acts of wrongdoing.

The degree of credit due a witness should be determined by his character and conduct, by his manner upon the stand, his bias or impartiality, the reasonableness or otherwise of the statements he makes and the strength or weaknesses of his recollections viewed in the light of all the other testimony, facts and circumstances in the case.

In considering the testimony of the witness, you are ✓
entitled to take into consideration his admission of conviction of crimes committed by him as affecting his credibility as a witness.

REQUEST TO CHARGE

BEST COPY AVAILABLE

JUDGMENT OF COMMITMENT OF

United States of America vs.

DEFENDANT JOS. F. VALVERDE

United States District Court for

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

JOSEPH F. VALVERDE

DOCKET NO.

75 Cr 745

591 a

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
January 27, 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Henry Rothblatt, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FINDINGS & JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly distributing and possesing with intent to distribute a Schedule II narcotic drug controlled substance, and conspiring to do so as charged in Counts 1, 3 and 7.

21, USC, §812, 841(a)(1), §841(b)(1)(A), §846 and §2

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of:

FOUR YEARS on each of Counts 1, 3 and 7 to run concurrent with each other. Pursuant to Title 21, USC, §841, defendant is to be placed on Special Parole for a period of THREE YEARS to commence upon expiration of confinement.

Defendant released on bail pending appeal. Bail bond to be renewed on or before Noon, January 29, 1976.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period, in a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT RECOMMENDATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒

U.S. District Judge

☐ U.S. Magistrate

Thomas P. Griesa



NOTICE OF APPEAL OF
DEFENDANT JOSEPH F. VALVERDE

s. o. p. d
592 a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Docket Number 75 Cr. 745

-against-

SAMUEL GLASSER, JOSEPH F.
VALVERDE, EUGENE PIPER,
MARTIN KREIMAN, and STEVEN
GREENSTEIN,

HON. THOMAS P. GRIESA
(District Court Judge)

Defendants.

NOTICE OF APPEAL

Notice is hereby given that JOSEPH F. VALVERDE

appeals to

the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order ☐ other

(specify) entered in this action on January 27, 1976
(Date)

ROTHBLATT, ROTHBLATT, SEIJAS & PESKIN
(Counsel for Appellant)

Date January 30, 1976

Address 232 West End Avenue
New York, N.Y. 10023

To:
HON. THOMAS J. CAHILL
United States Attorney
Southern District of New York

Phone Number (212) 787-7001

JOSEPH F. VALVERDE
242 E 50 ST
NEW YORK, N.Y. 10022

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE

- ☒ I am ordering a transcript
☐ I am not ordering a transcript
Reason:
☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

TRANSCRIPT ORDER

- Prepare transcript of
☐ Pre-trial proceedings
☐ Trial
☐ Sentence
☐ Post-trial proceedings

DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE)

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) Method of payment ☒ Funds ☐ CJA Form 21

ATTORNEY'S Signature Henry B. Rothblatt

DATE 2/16/76

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date

Signature

(Court Reporter)

ORIGINAL

(2)

